

No. 11908

United States
Circuit Court of Appeals
For the Ninth Circuit.

INLAND EMPIRE PAPER COMPANY,
a Corporation,
Appellant.
vs.

HARTFORD STEAM BOILER INSPECTION
AND INSURANCE COMPANY OF HART-
FORD CONNECTICUT, a Corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Eastern District of Washington
Northern Division

FILED

JUN 24 1948

PAUL P. O'BRIEN,



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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Affidavit of Fred Beguelin.....	471
Affidavit of Service of Complaint.....	33
Alternative Motion for a New Trial or for Entry of Plaintiff's Requested Findings and Entry of Appropriate Judgment Thereon...	469
Amended Designation of Portions of Record to Be Certified for Appeal Purposes.....	494
Answer	44
Appeal:	
Bond on.....	490
Notice of.....	489
Appeal Bond.....	490
Bond on Removal from Superior Court.....	40
Certificate of Clerk (SC).....	43
Clerk's Certificate to Transcript of Record....	496
Complaint	3
Exhibit A—Insurance Policy 97-743.....	9
Designation of Portions of Record to Be Certi- fied for Appeal Purposes.....	492
Exhibits for the Plaintiff:	
1—General View of the No. 4 Paper Ma- chine (in evidence).....	54
2—Sumner Steam Engine (in evidence).	56

INDEX

PAGE

Exhibits for the Plaintiff—(Continued):

3—Southern Half of Line Shaft (in evidence)	58
4—Northern Half of Line Shaft (in evidence)	58
5—Press Rolls of the First Press (in evidence)	60
6—Couch Roll of the Wire Section (in evidence)	62
7—Driven Pulley for the Wire Section (in evidence).....	62
8—Side View Sumner Steam Engine showing Pickering Governor (in evidence)	64
9—Handle Connecting End of Safety Chain on Operating Floor (in evidence)	70
10—Chain Going Through Floor to Sumner Steam Engine (in evidence).....	71
11—Close-up of Overspeed Stop (in evidence)	72
13—Letter—Black to Defendant 8-21-46...	205
14—Statement of Cost of Repairs.....	455
15—Report of Inspection 1-20-45.....	212
16—Report of Inspection 4-22-45.....	213
17—Report of Inspection 12-16-45.....	215
18—Insurance Policy No. 97-743 (Exhibit A to Complaint).....	9
19—Letter—Defendant to Plaintiff 10-18-46	236

INDEX

PAGE

Findings of Fact and Conclusions of Law.....	464
Conclusions of Law.....	467
Findings of Fact.....	464
Judgment	468
Names and Addresses of Attorneys of Record..	1
Notice of Appeal.....	489
Notice of Presenting Petition for Removal from Superior Court.....	34
Order Denying Plaintiff's Alternative Motion for New Trial or Entry of Plaintiff's Re- quested Findings and Entry of Judgment Thereon	485
Order Forwarding Defendant's Exhibit No. 12	495
Order of Removal from Superior Court.....	39
Order Upon Stipulation to Withdraw Exhibits.	488
Petition for Removal.....	35
Plaintiff's Proposed Findings of Fact and Conclusions of Law Requested by Plaintiff..	475
Conclusions of Law.....	483
Findings of Fact.....	475
Record of Proceedings at the Trial.....	50
Witnesses for the Defendant:	
Fullmer, Fred	
—direct	298, 313
—voir dire.....	311
—cross	318
McKeon, Philip	
—direct	342
—cross	350

INDEX

PAGE

Witnesses for the Defendant—(Continued):

Murray, Joseph G.

—direct	325
—cross	333
—redirect	339
—recross	341

Olinger, Harry L.

—direct	265
—cross	280
—redirect	296

Witnesses for the Plaintiff:

Beguelin, Fred

—direct	187, 351
—cross	192, 354
—redirect	201

Black, Myron W.

—direct	51, 202
—cross	216
—redirect	232, 239
—recross	238

Coy, Ezra E.

—direct	96
—cross	100

Davis, Richard C.

—direct	108
—cross	113
—redirect	114
—recross	115

Gibson, Delbert W.

—direct	93
—cross	95

INDEX

PAGE

Witnesses for the Plaintiff—(continued):

Janecek, Jerome L.

—direct 116

—cross 126

—redirect 159, 169

—recross 166

Janosky, Ralph O.

—direct 76

—cross 80

—redirect 86

Leitner, George

—direct 87

—cross 90

MacCamy, Harry J.

—direct 240

—cross 246

—redirect 257

—recross 258

Wheeler, Justin H.

—direct 169

—cross 172

Plaintiff's Closing Argument..... 358

Plaintiff's Final Argument..... 435

Ruling of the Court..... 448

Reply 49

Request for Printing of Record and Statement
of Points..... 498Stipulation for Temporary Withdrawal of
Exhibits 487Stipulation to Send Defendant's Exhibit 12 to
Circuit Court of Appeals..... 495

Summons 2



NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

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Attorneys for Appellant.

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Spokane 8, Washington,

Attorneys for Appellee.

In the Superior Court of the State of Washington
in and for the County of Spokane
No. 119095
(657)

INLAND EMPIRE PAPER COMPANY,
a corporation, vs. Plaintiff,
HARTFORD STEAM BOILER INSPECTION
AND INSURANCE COMPANY OF HART-
FORD, CONNECTICUT, a corporation,
Defendant.

SUMMONS

The State of Washington to Hartford Steam Boiler
Inspection and Insurance Company of Hart-
ford, Connecticut, a corporation, Defendant:

You are hereby summoned to appear within
twenty (20) days after service of this summons, ex-
clusive of the day of service, and defend the above-
entitled action in the court aforesaid, and answer
the complaint of plaintiff and serve a copy of your
answer on the undersigned attorneys for plaintiff
at the address below stated; and in case of your
failure so to do, judgment will be rendered against
you according to the demand of the complaint, which
will be filed with the Clerk of said Court, a copy of
which is herewith served upon you.

WITHERSPOON, WITHERSPOON
& KELLEY,

Attorneys for Plaintiff.

Post Office Address:

1114 Old National Bank Building,
Spokane, Washington.

[Endorsed]: Filed April 2, 1947. [1*]

[Title of Superior Court and Cause.]

COMPLAINT

Plaintiff complains of the defendant and for cause of action alleges:

I.

That the defendant at all times herein mentioned was and now is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and now is and was at all times herein mentioned a corporation engaged in writing liability and other insurance, including machinery breakage insurance in the State of Washington, and authorized to write such insurance.

II.

That the plaintiff was the owner of certain paper-making machinery, including a certain Sumner Steam Engine at the time of its insurance and loss as hereinafter mentioned.

III.

That on the 5th day of May, 1944, at Spokane, Washington, the defendant, through its authorized representative, in consideration of \$8,914.42, which the plaintiff then paid, executed to it a policy of insurance upon certain paper making machinery, including a Sumner Steam 2-Cylinder Engine with a rating cylinder size of 12 inches, designated at No. 4, on said policy, a copy of which is hereto annexed, marked "Exhibit A" and by this reference made a part of this complaint.

IV.

That on July 3, 1946, while said Sumner Steam Engine was driving [2] a paper machine at the plant

of plaintiff at Millwood, Washington, and operating in the same proper fashion as it was on May 5, 1944, at the inception of said insurance risk, the control devices on said engine failed to function, causing a sudden overspeed of said engine; that this overspeed was caused by the breaking of the belt which drove the governor on said engine; that the breaking of said belt permitted the governor on said engine to open wide and become inoperative as a governor, causing said engine to race at a speed which caused the following damage to the said paper machine, parts of said engine and plant of plaintiff:

Paper Machine

The basement line shaft of said paper machine was twisted from one end to the other for a distance of more than 75 feet, with the result that all six couplings on said line shaft were damaged, and the eight pulleys mounted on said line shaft were all broken; the bearings supporting this line shaft were all damaged; the tops of two concrete piers supporting said line shaft were broken; two driven pulleys on the main floor above said basement line shaft were broken. The shafts supporting these two pulleys were twisted and damaged as well as certain miscellaneous other damage to the paper machine proper. In addition to said damage, the main engine belt was broken as well as all belts driving the different sections. Flying debris damaged fourdrinier wire and further damaged several table rolls.

Summer Steam Engine:

Broken lubricator lines, broken lubricator, several broken guards and damage to steam lines.

Plant

Various doors and windows, as well as a spare Pickering governor, were damaged and broken by flying debris.

V.

That said engine and control devices thereon had been inspected by the defendant on December 16, 1945, and passed as satisfactory.

VI.

That plaintiff notified defendant's agents in Spokane immediately by telephone of the accident and that said agents in turn notified the Seattle Office of defendant, and defendant's Seattle representative phoned plaintiff the evening of July 3 and was further informed of said accident by plaintiff. Said representative, together with other representatives of defendant inspected said damage on July 5, 1946, and on the following day [3] plaintiff furnished defendant with written notice of said accident and subsequently otherwise performed all the conditions of said policy on its part; that with the knowledge and consent of the defendant, plaintiff called in the Union Iron Works of Spokane, which had made part of said machinery and equipment, and with the knowledge, consent and approval of representatives of the defendant, the situation was appraised by the representatives of

said Union Iron Works of Spokane, and said Union Iron Works of Spokane was given an order to make certain castings, line shaft bearings and other work which the plaintiff was not able to do with its own men and equipment under the circumstances. This work included nine pulleys to be cast, machined and balanced, as well as replacing the entire line shaft with couplings and bearings; other work such as wrecking the damaged equipment, replacing the broken piers and erecting all equipment as it was received, as well as machine work on shafting and general repair work while waiting for the new equipment, was done by the maintenance crew of plaintiff with the knowledge, consent and approval of the defendant.

VII.

That said machinery, engine and other equipment was not purchased, repaired, assembled and tried until July 29, 1946, when plaintiff was able to once more use said Sumner Steam engine to drive said paper machine.

VIII.

That for the direct loss suffered during the period July 3 to July 29, 1946, as a result of said accident of July 3, 1946, plaintiff, at the request of defendant, submitted to defendant a statement of its loss in words and figures as follows:

“Debit Memorandum from Inland Empire Paper Company, Millwood, Washington, September 12, 1946, to Hartford Steam Boiler Ins. & Ins. Co., 707 Arctic Bldg., Seattle, Washington.

We debit your account as follows:

Overspeeding Engine #4 Accident, 1:45 p.m.,
July 3, 1946

Use and Occupancy.....	\$ 7,350.00
Repair Labor, straight time.....	2,524.57
see sheet B	
Repair Labor, premium time.....	321.19
see sheet B	
Miscellaneous Repair parts drawn from	
Store Account.....	448.54
see Foreman's Requisitions attached	
Miscellaneous Repairs, not accomplished.....	410.42
see sheet C	
Loss of Fourdrinier Wire	198.52
see sheet D	
Belting of Drives.....	280.74
see sheet E	
Union Iron Works, Invoice 360566.....	4,623.77
Supervision and overhead.....	16.06
	<hr/>
	\$16,173.81

Misc. In.	7,366.06
Belting	280.74
Store	5,482.73
Wires	198.52
Rep. Lbr.	2,845.76

INLAND EMPIRE PAPER
COMPANY."

IX.

That defendant did not and has not paid the said loss nor any part thereof, but on October 18, 1946, denied liability therefor under said policy. That defendant was damaged as a result of said accident in the sum of \$16,173.81.

Wherefore, plaintiff prays judgment in the sum of \$16,173.81, and for interest at 6% from the 12th day of September, 1946, and for its costs and disbursements herein incurred.

WITHERSPOON, WITHERSPOON,
& KELLEY,
Attorneys for Plaintiff.

State of Washington,
County of Spokane—ss.

Myron Black, being first duly sworn, on oath deposes and says:

That he is the Mill Manager of Inland Empire Paper Company, the plaintiff in the above cause of action, that he has read the above and foregoing Complaint, knows its contents and believes the same to be true.

MYRON BLACK.

Subscribed and sworn to before me this 1st day of April, 1947.

W. V. KELLEY,
Notary Public in and for the State of Washington,
residing at Spokane.

[Endorsed]: Filed April 2, 1947. [5]

EXHIBIT A

The Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a stock company (herein called the Company).

Policy Number 97-743

Insuring Agreement

In consideration of \$8,914.42 premium does hereby agree with Inland Empire Paper Company (herein called the Assured) whose address is Millwood, Washington, respecting loss (excluding loss of the kind described in Section II, and excluding loss of the kind described in Section IV) from an accident as herein defined to an object described herein, occurring during the policy period which is from May 5, 1944, to May 5, 1947, at 12 o'clock noon, standard time, as to each of said dates, at the place where such accident occurs, subject to a Limit per Accident of Fifty Thousand Dollars (\$50,000.), as follows:

Section I

To Pay the Assured for loss on the property of the Assured directly damaged by such accident (or, if the Company so elects, to repair or replace such damaged property), excluding (a) loss from fire (or from the use of water or other means to extinguish fire), (b) loss from an accident caused by fire, (c) loss from delay or interruption of business or manufacturing or process, (d) loss from lack of power, light, heat, steam or refrigeration, and (e) loss from any indirect result of an accident;

Section II

To Pay the Assured, if loss under Section II is stated above as included but not otherwise, for the extra cost represented by items of expense for temporary repair or for expediting the repair of such damaged property of the Assured including overtime and the extra cost of express or other rapid means of transporting material, but if the Company's payment under Section I is \$1,000 or less the Company's liability under Section II shall not exceed an amount equal to said payment under Section I, and if said payment under Section I exceeds \$1,000, the Company's liability under Section II shall not exceed \$1,000 plus 25% of the amount by which the Company's payment under Section I exceeds \$1,000; and the Company's liability under Section II shall be a part of and not in addition to the Limit per Accident;

Section III

To Pay, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I and II, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured for loss on the property of others directly damaged by such accident, including liability for loss of use of such damaged property of others; to Defend the Assured against any claim or suit alleging such damage unless or until the Company shall elect to effect settlement thereof;

Section IV

To Pay, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I, II and III, if loss under Section IV is stated above as included but not otherwise, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured, including liability for loss of services, on account of bodily injuries (including death at any time resulting therefrom) sustained by any person and caused by such accident, except that the indemnity hereunder shall in no event apply to any liability or obligation under any workmen's compensation law; to Pay, if loss under Section IV is stated above as included but not otherwise, irrespective of the Limit per Accident, for such immediate surgical relief as shall be rendered at the time of the accident; to Defend the Assured, if loss under Section IV is stated above as included but not otherwise, against any claim or suit alleging such liability unless or until the Company shall elect to effect settlement thereof; and

Section V

To Pay, irrespective of the Limit per Accident, all costs taxed against the Assured in any legal proceeding defended by the Company in accordance with Section III or IV, all interest accruing after entry of judgment rendered in connection therewith up to the date of payment by the Company of its share of such judgment, all premium charges on

attachment or appeal bonds required in such legal proceedings, and all expenses incurred by the Company for such defense;

Provided the accident happens while the object is in use, or connected ready for use, at the location specified for it in the Schedule. It is Provided Further that this agreement is subject to the Conditions printed hereon and subject also to the Schedules and endorsements issued to form a part hereof. The Schedules and endorsements attached to this policy when it is issued are identified as follows: Schedule(s) numbered 1 to 21 Incl. Endorsement(s) numbered 1, 2.

In Witness Whereof, The Hartford Steam Boiler Inspection and Insurance Company has caused this policy to be signed by its President and Secretary at Hartford, Conn., and countersigned by a duly authorized representative of the Company.

/s/ C. C. GARDINER,
President.

/s/ C. EDGAR BLAKE,
Secretary.

Countersigned by:

/s/ FERN FULLMER,
Authorized Representative.

Conditions

Limit Per Accident

1. The Company's total liability for loss from any one accident shall not exceed the amount stated as Limit per Accident. The term "one accident" shall be taken as including all resultant or concomitant accidents whether to one or more than one object or part of an object.

Bodily Injuries

2. If at the time of an accident there is in effect any other contract or provision requiring any insurance company or any association or individual, or body politic or corporate, to pay the Assured or in his behalf or stead, for loss of a kind described in Section IV caused by the accident, the insurance, if any, under Section IV shall not be considered as contributing insurance and shall become effective and applicable only on any part of said loss of the Assured for which there is not then in effect such other valid and collectible insurance. If at such time there is not in effect any such other contract or provision with respect to such loss then the insurance, if any, under Section IV may be applied to any part of said loss.

Other Property Insurance

3. In the event of a property loss to which both this insurance and other insurance carried by the Assured apply, herein referred to as "joint loss," (a) the Company shall be liable only for the pro-

portion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the whole amount of such other valid and collectible insurance; or, (b) the Company shall be liable only for the proportion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the amount which would have been payable under all other insurance on account of said loss had there been no insurance under this policy; but this clause (b) shall apply only in case the policies affording such other insurance contain a similar clause.

Limitation of Liability

4. (a) The Company shall not be liable under this policy for loss from an accident caused directly or indirectly by strike, riot, civil commotion, acts of malicious mischief, bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, enemy attack, or by operations of armed forces while engaged in hostilities, whether war be declared or not.

(b) The Company shall not be liable as respects the property of the Assured damaged or destroyed, for more than the actual cash value thereof at the time of the accident. If as respects the damaged property of the Assured the repair or replacement

of any part or parts of an object is involved, the Company shall not be liable for the cost of such repair or replacement in excess of the actual cash value of said part or parts or in excess of the actual cash value of the object, whichever value is less. Actual cash value in all cases shall be ascertained with proper deductions for depreciation, however caused.

Inspections and Suspension

5. The Company shall be permitted at all reasonable times during the policy period to inspect the objects and the premises where the objects are located. Upon the discovery of a dangerous condition with respect to any object, any representative of the Company may immediately suspend the insurance thereon by written notice mailed or delivered to the Assured at the address of the Assured, as stated herein, or at the location, as stated in the Schedule, of the object to which the suspension applies. Insurance so suspended may be reinstated by the Company but only by endorsement issued to form a part hereof. The Assured shall be allowed the unearned premium paid for such object, pro rata, for the period of such suspension.

Cancellation

6. This policy may be canceled by the Assured by mailing written notice to the Company stating when thereafter such cancellation shall be effective, in which case the Company shall refund the excess of premium paid by the Assured above the short rate

premium computed in accordance with the Short Rate Cancellation Table printed hereon. This policy may be canceled by the Company by mailing written notice to the Assured at the address of the Assured, as stated herein, stating when, not less than ten days thereafter, such cancellation shall be effective, and the Company shall refund the excess of premium paid by the Assured above the pro rata premium for the expired term. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing and whether such notice shall be mailed or delivered the insurance under this policy shall end on the effective date and hour of cancellation stated in the notice. Cancellation shall not affect any claim for loss from an accident occurring prior to the effective date and hour of cancellation.

Notice of Accident and Adjustment

7. The Company shall not be liable for loss from an accident unless written notice thereof is given by or on behalf of the Assured or claimant to the Company or to any of its authorized agents, as soon as practicable. The Assured shall give like notice to any claim made on account of such accident. The Company shall have reasonable time and opportunity to examine the property and the premises of the Assured before repairs are undertaken or physical evidence of the accident is removed, except for protection or salvage. Proof of loss shall be made by the Assured in such form and detail as the Company may require. The Assured upon request of the

Company shall render every assistance in facilitating the investigation and adjustment of any claim, submitting to examination and interrogation by any representative of the Company. The Assured shall not voluntarily assume any liability, make any payment or incur any expense, other than at the Assured's own cost except as otherwise expressly permitted herein, or interfere in any negotiation for settlement or in any legal proceeding, without the consent of the Company previously given in writing, but payment by the Assured of any judicial judgment or claim for any of the indemnity for which the Company would become liable under this policy, shall not bar the Assured's right of action against the Company therefor.

Subrogation

8. The Company shall be subrogated in case of payment of loss under this policy, to the extent of such payment, to all of the Assured's rights of recovery therefor and the Assured shall execute all papers required and shall do everything necessary to secure such rights.

Suits Against Assured

9. If a suit is brought against the Assured for loss to which this insurance is applicable, the Assured shall immediately forward to the Company every summons or other process served upon the Assured. The Assured upon request of the Company shall aid in effecting settlements, in securing evidence and the attendance of witnesses, and in prosecuting appeals.

Suits Against Company

10. Suit shall not be brought under this policy unless commenced within fourteen months from the date upon which the accident occurred, except that an action for indemnity payable hereunder as the result of a suit against the Assured may be brought within two years after the termination of such suit; provided that where such limitation of time is prohibited by the laws of the state wherein the loss occurs, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation of time permitted under the laws of that state for such an action.

Insolvency of Assured

11. To the extent only that any indemnity under this policy becomes finally applicable to loss of the Assured from the liability of the Assured to a third person, the bankruptcy or insolvency of the Assured or his estate shall not relieve the Company of any of its obligations hereunder; and if said person or his legal representative shall obtain final judgment against the Assured or his legal representative because of an accident, then such person or his legal representative may proceed against the Company to recover to said extent on the amount of such judgment, either at law or in equity.

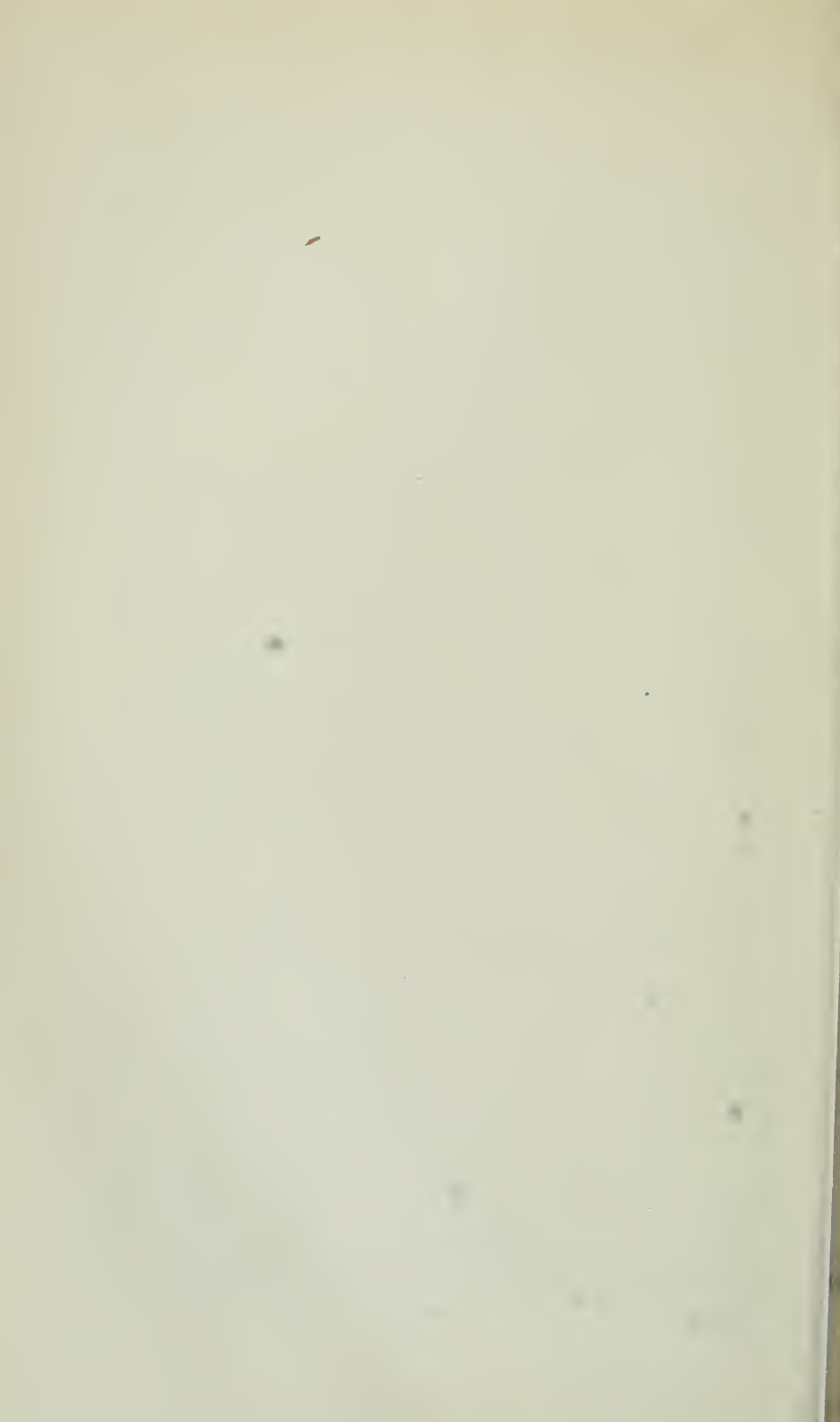
Changes

12. By acceptance of this policy the Assured agrees that it embodies all agreements existing between the Assured and the Company or any of its

agents relating to this insurance. No provision or condition of this policy shall be waived or altered except by endorsement issued to form a part hereof, signed by the President, a Vice President or the Secretary of the Company. The additional or return premium for any such endorsement shall be computed in accordance with the Adjustment Table printed hereon. Notice to any agent, or knowledge possessed by any agent or by any other person, shall not be held to effect a waiver or change in any part of this policy. This policy shall be void if it is assigned without the written consent of the Company, but if the death, insolvency or bankruptcy of the Assured shall occur during the policy period, the Assured under this policy during the remaining unexpired portion of such period shall be the legal representative of the Assured, provided written notice shall be given to the Company within thirty days after the date of such death, insolvency or bankruptcy.

Schedules

13. The insurance hereunder shall apply only to loss from an accident to the object or objects designated and described in a Schedule or Schedules issued to form a part hereof, bearing the signature of the President of the Company. Such Schedule or Schedules which contain the description of such object or objects, the definition thereof and the definition of accident and other provisions as applicable to the respective objects described in each such Schedule, shall be considered as incorporated in this policy.



SCHEDULE

ENGINES, RECIPROCATING PUMPS AND COMPRESSORS (Except Internal Combustion Type)

Schedule forms a part of Policy No. 97-743 and is in effect from noon of May 5, 1944

- INLAND EMPIRE PAPER COMPANY -

The engines, reciprocating pumps and compressors covered under this Schedule are designated as follows:

Location **Assured's Plant, Millwood, Spokane, Washingt**
(Street and Number) (City) (County) (State)

[illegible]

phs B and C printed on the back of this sheet are hereby made a part of this Schedule.

The Hartford Steam Boiler Inspection and Insurance C

L. C. Gardiner



Schedule—(Continued)

Engines, Reciprocating Pumps and Compressors
(Except Internal Combustion Type)

Paragraphs B and C mentioned on the reverse side of this sheet are as follows:

Definition of Object

B. (a) As respects any such engine, "Object" shall mean the complete engine so described (which shall include any apparatus used as an auxiliary in the operation of the engine and mounted on its frame, and all interconnecting piping between parts of the engine), but shall not include any piping leading to or from the engine, nor the condensor or its connecting pipe (or adapter), nor any electrical machine (other than a governor motor) or part thereof whether mounted with the engine on a common shaft or bed or otherwise, nor any foundation or other structure supporting the engine, nor any mechanism, appliance or shafting connected to the engine by belts, ropes, chains, couplings, gears, pipes or other means.

(b) As respects any such reciprocating pump or compressor described as "Steam Type," "Object" shall mean the complete unit so described, which shall include the driving engine (or driving power cylinders, pistons and connecting parts) and any driven pump or compressor direct-connected or coupled to said driving engine (or said driving parts), together with any apparatus used as an

auxiliary in the operation of the unit and mounted on its frame, and all interconnecting piping between parts of the unit, but shall not include any piping leading to or from the unit, nor the condenser or its connecting pipe (or adapter), nor any electrical machine (other than a governor motor) or part thereof whether mounted with the unit on a common shaft or bed or otherwise, nor any foundation or other structure supporting the unit, nor any mechanism, appliance or shafting connected to the unit by belts, ropes, chains, couplings, gears, pipes or other means.

(c) As respects any such reciprocating pump or compressor described as "Separately Driven Type," "Object" shall mean the complete pump or compressor so described (which shall include any apparatus used as an auxiliary in the operation of the pump or compressor and mounted on its frame, and all interconnecting piping between parts of the pump or compressor), but shall not include any piping leading to or from the pump or compressor, nor any electrical machine or part thereof whether mounted with the pump or compressor on a common shaft or bed or otherwise, nor any foundation or other structure supporting the pump or compressor, nor any mechanism, appliance or shafting connected to the pump or compressor by belts, ropes, chains, couplings, gears, pipes or other means.

Definition of Accident

C. As respects any object described in this Schedule, "Accident" shall mean a sudden and accidental

breaking, deforming, burning out or rupturing of the object or any part thereof, which manifests itself at the time of its occurrence by immediately preventing continued operation or by immediately impairing the functions of the object and which necessitates repair or replacement before its operation can be resumed or its functions restored, but the breaking, deforming, burning or rupturing of any gasket, gland packing, or shaft seal or diaphragm, shall not constitute an accident, nor shall the depletion of material in any part of the object, due to pitting, corrosion or wear, be construed as an accident.

Endorsement No. 1. Issued 4/19/44

This endorsement forms a part of Policy No. 97-743 and is in effect from noon of May 5, 1944.

Assured Inland Empire Paper Company.

A. In consideration of the premium, the Company hereby agrees to pay the Assured Fifteen Hundred Dollars (\$1,500), herein called the Daily Indemnity, for each day of Total Prevention of Business on the Premises described as Assured's Paper Mill, and located at Millwood, Washington, caused solely by an accident (occurring while this endorsement is in effect) to an object, covered by any of the Schedules of this policy excluding Schedule No. 9, and to pay the Assured a part of the Daily Indemnity for Partial Prevention of Business on the Premises, so caused; all subject to a Limit of Loss of One Hundred Twelve Thousand Five Hundred Dollars (\$112,500) for any one acci-

dent, but the Company's total liability, with respect to one accident under any Schedule described in Column I, shall be limited to the amount shown therefor in Column II, any amount in Column II being a part of and not in addition to the Limit of Loss.

Column I	Column II
Schedules Nos. 1, 3, 4.....	\$111,000
Schedule No. 5.....	\$13,500
Schedule No. 6.....	\$51,000
Schedules Nos. 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21.....	\$52,500

B. The Premises are used for manufacturing purposes.

C. The Assured shall send notice of accident, by telegram (at the Company's expense) or by letter, to the Company at its Home Office in Hartford, Connecticut, or at its office at 707 Arctic Building, Seattle, Washington, and upon the arrival of such notice at whichever of said cities it reaches first, shall depend the Commencement of Liability determined with respect to See Endorsement No. 2 in accordance with Paragraph F.

Paragraphs D, E, F, G and H printed on the back of this sheet are hereby made a part of this endorsement.

THE HARTFORD STEAM
BOILER INSPECTION AND
INSURANCE COMPANY

/s/ C. C. GARDINER,
President.

/s/ FERN FULLMER,
Authorized Representative.

Endorsement—(Continued)

Use and Occupancy (Business)

Paragraphs D, E, F, G and H mentioned on the reverse side of this sheet are as follows:

Limits

D. The liability of the Company under this endorsement for payment for any one day shall not exceed the amount stated as Daily Indemnity for said day; and the Company's total liability under this endorsement on account of any one accident shall not exceed the amount stated as Limit of Loss. Said amounts shall apply irrespective of the Limit per Accident.

If more than one Assured is named, the Company shall not be liable under this endorsement for any payment in excess of that for which it would have been liable if only one Assured had been named.

Definitions

E. "Day" shall mean a period of twenty-four consecutive hours, beginning at midnight.

"Total Prevention" shall mean the prevention of all Business on the Premises during all of a day.

"Partial Prevention" shall mean a reduction in Business on the Premises during part or all of a day, sufficient to make the Business for such day less than Current Business. The amount to be paid by the Company for Partial Prevention shall be only that proportionate part of the amount for which it would have been liable for Total Preven-

tion for such day, which such reduction, caused by the accident, from Current Business bears to Current Business.

If the Premises are indicated in Paragraph B as used for manufacturing purposes, "Business" shall mean the production on the Premises of the finished product ready for packing, shipment or sale.

If the Premises are indicated in Paragraph B as used for mercantile purposes, "Business" shall mean the gross sales on the Premises.

If the Premises are indicated in Paragraph B as used for rental purposes, "Business" shall mean the rents collectible from the Premises.

If the Premises are indicated in Paragraph B as used for professional purposes, "Business" shall mean the gross income on the Premises.

"Current Business" shall mean one-third of the total Business on the Premises during the three days next preceding the day of the accident or during any other three days selected by the Assured in any calendar week in the eight calendar weeks, in each of which there has been any Business on the Premises, next preceding the day of the accident.

The definition of "object" and the definition of "accident," as those terms are used in this endorsement, shall be the definition of "object" and the definition of "accident" respectively, each as stipulated for the object in the Schedule covering the said object.

Commencement of Liability

F. The liability of the Company under this endorsement for payment on account of an accident

shall commence at a time fixed by the arrival of the notice of the accident as provided in Paragraph C. If the Commencement of Liability is stated as determined with respect to "Time of Accident," the Company shall not be liable for payment for prevention of Business during any period before the twenty-fourth hour prior to such arrival of the notice. If the Commencement of Liability is stated as determined with respect to a midnight, the Company shall not be liable for payment for prevention of Business during any period prior to the specified midnight after such arrival of the notice.

Limitation of Liability

G. (a) The Company shall not be liable under this endorsement for payment for any prevention of Business resulting from an accident caused directly or indirectly by strike, riot, civil commotion, acts of malicious mischief, bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, enemy attack or by operations of armed forces while engaged in hostilities, whether war be declared or not.

(b) The Company shall not be liable for payment for any prevention of Business resulting from an accident caused by fire or by the use of water or other means to extinguish fire, nor for any prevention of Business resulting from fire outside of the object, following an accident. The Company shall not be liable for payment for any time during which Business would not or could not have been carried on if the accident had not occurred. The Company shall not be liable for payment for any

prevention of Business resulting from the failure of the Assured to use due diligence and dispatch in the resumption of Business. The period of prevention shall not be limited by the date of the end of the policy period.

(c) The Company shall not be liable for payment for any time during which the resumption of Business is, in any way, curtailed, delayed or interrupted because of any law, or any order or provision having like effect, regulating or restricting, directly or indirectly, the acquisition of material or labor or other means required for the repair of any property damaged or destroyed or for the construction or acquisition of property to replace such property damaged or destroyed or because of the suspension, lapse or cancelation of any license, lease, privilege, right, contract or order.

Alternative Provisions

H. The Company may take such means as will in the opinion of the Company permit the resumption of Business, in whole or in part, on the Premises or to supply the functions of the Premises in some other way, or the Company may require the Assured to take such means including the use of any surplus machinery, duplicate parts, equipment, supplies and surplus or reserve stock, which may be owned or controlled by the Assured, any extra expense so incurred at the written direction of the Company to be paid by the Company. The Company may require the Assured to use finished product owned or controlled by the Assured, or similar finished product that may be purchased elsewhere, to substitute for the Business prevented, any extra

expense incurred in the use or purchase of said finished product at the written direction of the Company to be paid by the Company. All such expenses, whether incurred by the Company or by the Assured at the written direction of the Company, shall be a part of and not in addition to the Limit of Loss.

Endorsement No. 2. Issued 4/19/44

This endorsement forms a part of Policy No. 97-743 and is in effect from noon of May 5, 1944.

Assured Inland Empire Paper Company.

With respect to loss under Use and Occupancy Endorsement No. 1, from an accident to objects described in any Schedule named in column A below, the words shown in column B for said Schedule are hereby inserted in the blank space in the fourth line of paragraph C of the said endorsement.

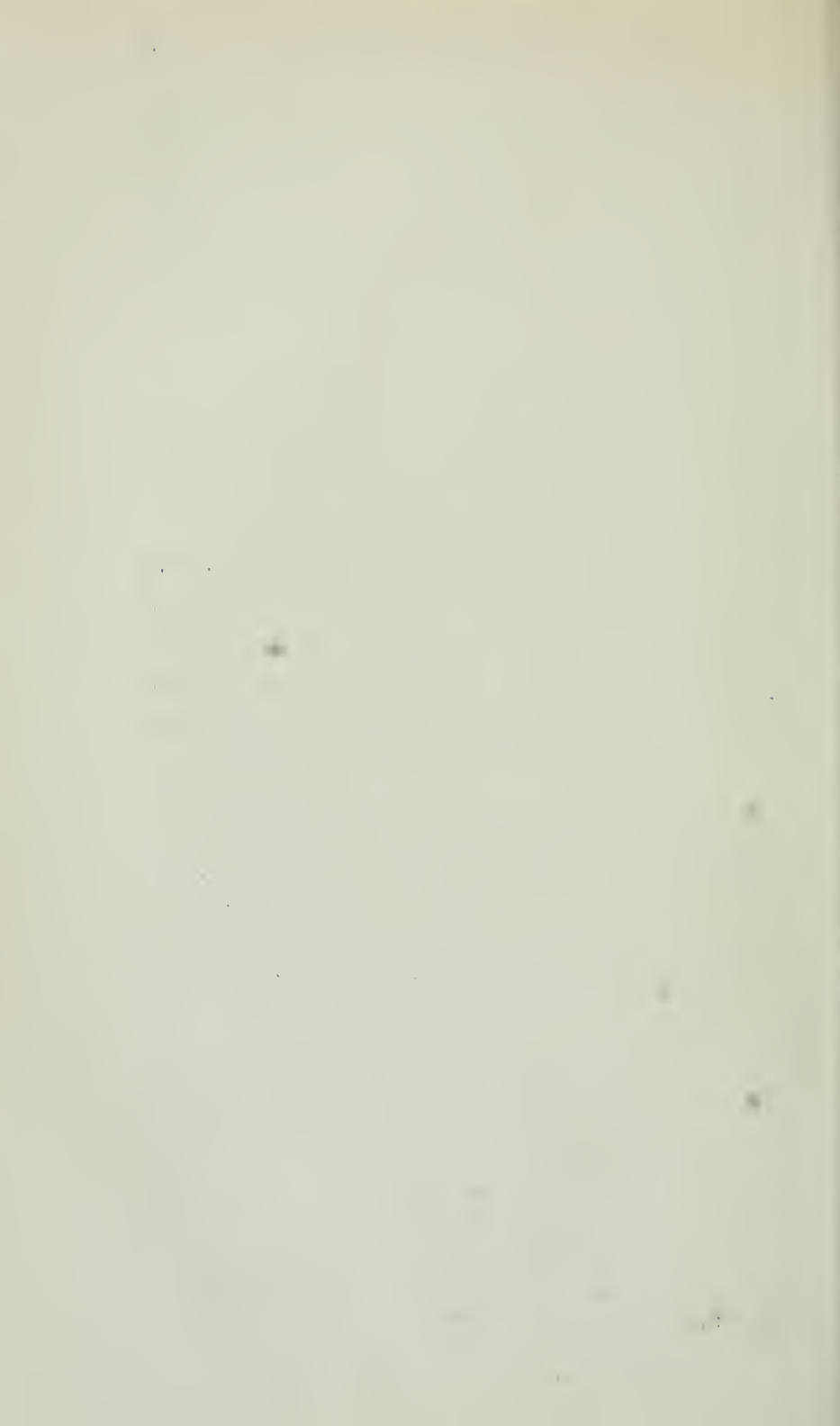
Column A	Column B
Schedules Nos. 1, 3, 4, 5, 6.....	First Midnight
Schedules Nos. 2, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21	Time of Accident

This endorsement is not valid unless countersigned by an authorized representative of the Company.

THE HARTFORD STEAM
BOILER INSPECTION AND
INSURANCE COMPANY,

/s/ C. C. GARDINER,
President.

/s/ FERN FULLMER,
Authorized Representative.



ADJUSTMENT TABLE

To obtain the additional premium or return premium which may be required for an endorsement effecting a change in any provision or condition of this policy, determine from the Adjustment Table the percentage for the unexpired term of the policy and apply that percentage to the premium that would be required for such change for the full term of the policy; except that if an object previously covered by the policy is added to the policy the additional premium required shall be equal to the amount which was allowed as the return premium on said object if the period between the date of elimination and the date upon which such object is added to the policy is less than three consecutive whole months. Premium adjustments for modifications involving both increased coverage and reduced coverage must not be computed by applying one percentage to the difference in the full term premiums required; additional premiums and return premiums must be computed separately.

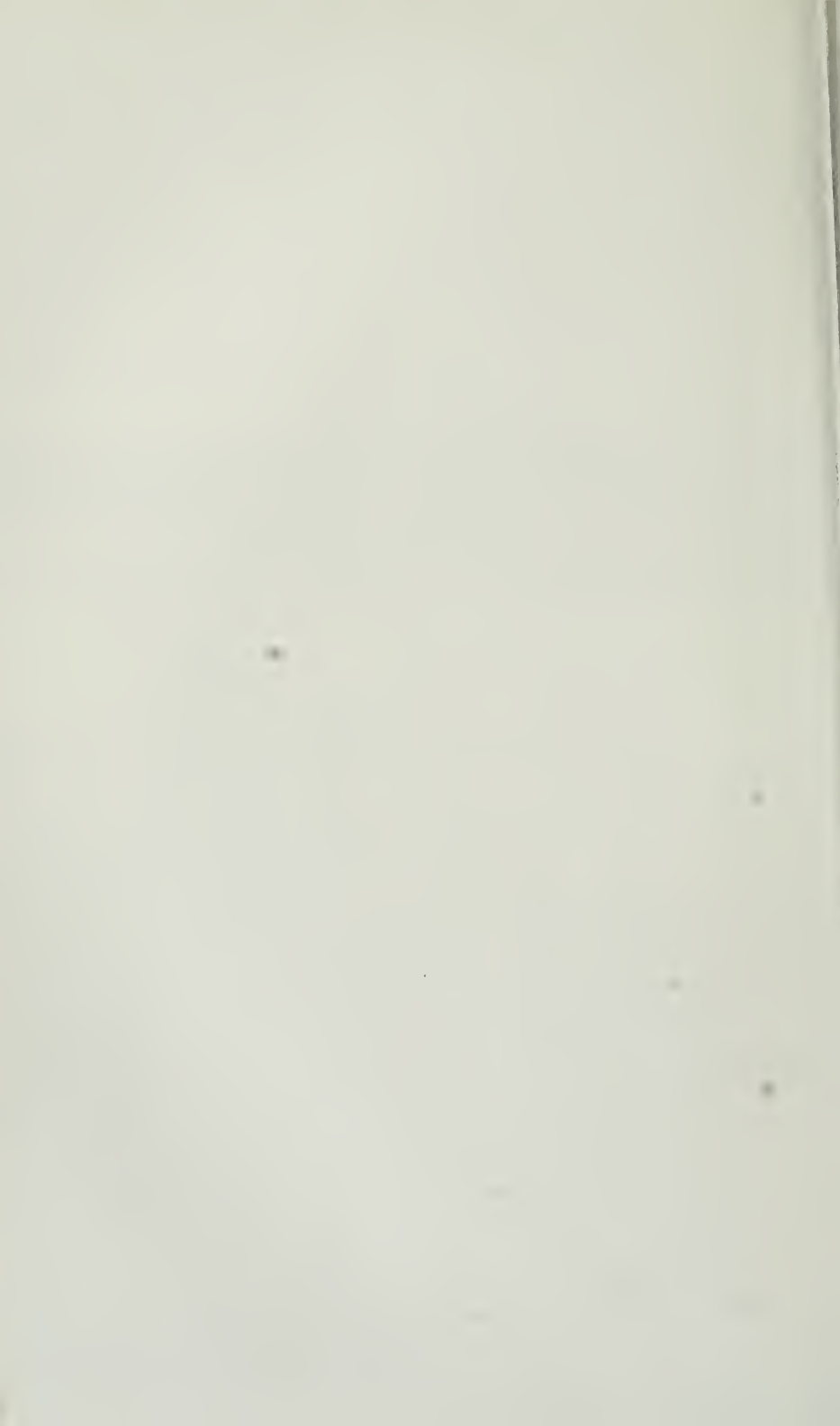
The premium for this policy has been determined by applying any discount for risk size, the additional or return premium for any subsequent change shall be determined, with respect to said discount, in accordance with the Company's Manual of Rates and Rates effective at the time of such change.

For an endorsement allowing a return premium

Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	7.0%	3.8%	2.6%	2.0%
2	14.1	7.6	5.2	4.0
3	21.3	11.4	7.9	6.0
4	28.4	15.3	10.5	8.0
5	35.4	19.1	13.1	10.0
6	42.4	22.9	15.7	11.9
7	49.7	26.7	18.3	14.0
8	56.8	30.7	21.0	16.0
9	63.8	34.5	23.6	17.9
10	70.8	38.2	26.2	20.0
11	78.1	42.2	28.8	22.0
12	85.1	46.0	31.5	24.0
13		49.8	34.1	25.9
14		53.6	36.7	27.9
15		57.5	39.3	30.0
16		61.3	42.0	31.9
17		65.1	44.6	33.9
18		68.9	47.2	35.9
19		72.8	49.8	37.9
20		76.6	52.5	39.9
21		80.4	55.1	41.9
22		84.2	57.7	43.9
23		88.2	60.4	45.9
24		92.0	63.0	47.9
25			65.6	49.9
26			68.2	51.9
27			70.9	53.8
28			73.5	55.9
29			76.1	57.9
30			78.7	59.8
31			81.4	61.8
32			84.0	63.9
33			86.6	65.9
34			89.2	67.8
35			91.9	69.9
36			94.5	71.8
37				73.8
38				75.8
39				77.8
40				79.8
41				81.8
42				83.8
43				85.8
44				87.8
45				89.8
46				91.8
47				93.8
48				95.8

For an endorsement requiring an additional premium, the percentage shall be determined on a pro rata basis, using the ratio of the number of days in the unexpired term to the total number of days in the policy term.

†The number of Months in the Unexpired Term shall be determined by counting from the effective date of the policy modification to the corresponding day of the month in succeeding months to the expiration of the policy, excluding any fractional part of a month remaining.



THE HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY

HARTFORD, CONNECTICUT

POLICY NUMBER

97-743

ISSUED TO

- INLAND EMPIRE PAPER COMPANY -

Millwood, Washington



OLD NATIONAL
INSURANCE AGENCY, Inc.
OLD NATIONAL BANK BUILDING
SPOKANE, WASHINGTON

ASSIGNMENT OF INTEREST

The interest of the Assured in this Policy is hereby assigned to.....

whose address is.....

with respect to unearned premium and losses from accidents occurring after noon of..... 19.....

subject to the consent of The Hartford Steam Boiler Inspection and Insurance Company.

(Signature of Assured)

THE HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY hereby consents to the Assignment of Interest as made above.

SHORT RATE CANCELLATION TABLE

Showing percentage of premium to be taken as earned premium

Months Policy in Force	One Year Policy	Two Year Policy	Three Year Policy	Four Year Policy
1	21.9	11.8	8.1	6.2
2	29.2	15.8	10.8	8.2
3	36.2	19.6	13.4	10.2
4	43.2	23.4	16.0	12.2
5	50.3	27.2	18.6	14.2
6	57.6	31.1	21.3	16.2
7	64.6	34.9	23.9	18.2
8	71.6	38.7	26.5	20.2
9	78.7	42.5	29.1	22.2
10	85.9	46.4	31.8	24.2
11	93.0	50.2	34.4	26.2
12	100.0	54.0	37.0	28.2
13		57.8	39.6	30.1
14		61.8	42.3	32.2
15		65.5	44.9	34.1
16		69.3	47.5	36.1
17		73.3	50.2	38.2
18		77.1	52.8	40.2
19		80.9	55.4	42.1
20		84.7	58.0	44.1
21		88.6	60.7	46.2
22		92.4	63.3	48.1
23		96.2	65.9	50.1
24		100.0	68.5	52.1
25			71.2	54.1
26			73.8	56.1
27			76.4	58.1
28			79.0	60.1
29			81.7	62.1
30			84.3	64.1
31			86.9	66.1
32			89.5	68.1
33			92.1	70.0
34			94.8	72.1
35			97.4	74.1
36			100.0	76.0
37				78.0
38				80.0
39				82.1
40				84.0
41				86.0
42				88.1
43				90.0
44				92.0
45				94.0
46				96.0
47				98.0
48				100.0

PLEASE READ THIS POLICY

13-6



[Title of Superior Court and Cause.]

AFFIDAVIT OF SERVICE

State of Washington,
County of Spokane—ss.

Evelyn V. Willard, being first duly sworn, on oath deposes and says:

That I am a citizen of the United States and a resident of the State of Washington, and at all times hereinafter mentioned was over the age of 21 years.

That I served the complaint in the above-entitled cause upon Thos. E. Moloney, Vice-President of the Old National Insurance Agency, Inc., agent for the Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a corporation, the defendant, at Spokane, Spokane County, Washington, on the 1st day of April, 1947, by then and there delivering to and leaving with said agent of said defendant a full, true and complete copy of said complaint in the above-entitled action.

EVELYN V. WILLARD.

Subscribed and sworn to before me this 1st day of April, 1947.

W. V. KELLEY,
Notary Public in and for the State of Washington,
Residing at Spokane.

[Endorsed]: Filed Apr. 2, 1947.

[Title of Superior Court and Cause.]

NOTICE

To: Witherspoon, Witherspoon and Kelley, Attorneys for Plaintiff:

Notice is hereby given that the defendant in the above-entitled action, The Hartford Steam Boiler Inspection and Insurance Company, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, will on the 2nd day of May, 1947, at two o'clock p.m., file in the Superior Court of the State of Washington in and for Spokane County, in which court said suit is now pending, its petition and [7] bond for the removal of said cause from said State Court to the District Court of the United States, in and for the Eastern District of Washington, Northern Division, Spokane, Washington.

PAINE, LOWE & COFFIN,
Attorneys for Defendant.

Received copy of above this 1st day of May, 1947,
Witherspoon, Witherspoon & Kelley, Attorneys for
Plaintiff.

[Endorsed]: Filed May 2, 1947.

[Title of Superior Court and Cause.)

PETITION FOR REMOVAL

Petition of the Defendant The Hartford Steam Boiler Inspection and Insurance Company, a Corporation, for the Removal of this Cause to the District Court of the United States, for the Eastern District of Washington, Northern Division.

The defendant, The Hartford Steam Boiler Inspection and Insurance Company, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, respectfully represents herein as follows:

I.

The plaintiff, Inland Empire Paper Company, now is and at the time of the commencement of this action was a corporation organized in and existing under the laws of the State of Washington, and now is and at the time of the commencement of this action was a citizen and resident of, and was domiciled in, the State of Washington.

II.

That the defendant, The Hartford Steam Boiler Inspection and Insurance Company, a Corporation, was at the time of the commencement of this action, and now is, a corporation organized, created, and existing under and by virtue of the laws of the State of Connecticut, and was at the time of the [8] commencement of this action, and now is, engaged in business in the State of Connecticut, having its

principal place of business in the State of Connecticut, and was at the time of the commencement of this action, and now is, a citizen and resident of the State of Connecticut, United States of America.

III.

That the summons in this action was served upon the Insurance Commissioner of the State of Washington on the 2nd day of April, 1947, and the time to plead, answer or demur to the same has not expired under the laws of the State of Washington as in such cases made and provided.

IV.

That this action, as appears from the complaint, reference to which is hereby made, is predicated upon a policy of insurance issued by the defendant covering a certain Sumner Steam Engine, and for loss and damages to property of the plaintiff alleged to be covered by said policy of insurance. That the plaintiff claims damages in the amount of \$16,173.81. Defendant denies any liability in any amount whatsoever to the plaintiff and is not liable to the plaintiff in any amount whatsoever. The amount in controversy and dispute between plaintiff and defendant, exclusive of interest and costs, therefore, is and at the time of the commencement of this action was, in excess of the sum of \$3000.00.

V.

The plaintiff is not a citizen of the same state as the defendant, nor is the defendant a citizen of the same state as the plaintiff. Each of them is a citi-

zen of a different state. The controversy between the plaintiff and defendant in this cause is therefore a controversy which at the time of the commencement of this action was, and still is, entirely between citizens of entirely different states.

VI.

That defendant has a good and sufficient defense on the merits to the whole of the claim of the plaintiff.

VII.

The defendant is ready to file and offers to file herewith its bond with good and sufficient surety, for the filing in the District Court of the United States for the Eastern District of Washington, Northern Division, within [9] the time fixed by law, of a certified copy of record in this action and for the payment of all costs that may be awarded in the aforesaid District Court of the United States, for the Eastern District of Washington, Northern Division, if the said court shall hold that this action was wrongfully or improperly removed thereto.

VIII.

The defendant herein has given the plaintiff proper and reasonable notice of this, its petition for the removal of this action.

Wherefore Your Petitioner Prays to the Court that it proceed no further herein, except to make an order of removal and to direct a transcript of the record made and certified as provided by law.

PAINE, LOWE & COFFIN,

Attorneys for Petitioner.

State of Washington,
County of Spokane—ss.

Alan G. Paine, being first duly sworn, on oath deposes and says: That he is a member of the firm of Paine, Lowe and Coffin, attorneys for the above-named petitioner and defendant, Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, and its fully authorized agent in this behalf, and has been authorized by the said petitioner and defendant to execute and present the foregoing petition, as its attorney in fact and one of the attorneys for the defendant in this action. That he has personal knowledge of the facts, and the foregoing petition is true in substance and fact, and he makes this verification on behalf of the defendant for the reason that there are no officers of the petitioner and defendant in Spokane County or within the State of Washington.

ALAN G. PAINE.

Subscribed and sworn to before me this 1st day of May, 1947.

M. J. SICKAFOOSE,
Notary Public in and for the State of Washington,
Residing at Spokane.

Received copy of above this 1st day of May, 1947.

WITHERSPOON, WITHERSPOON
& KELLEY,
Attorney for

[Endorsed]: Filed May 2, 1947. [10]

[Title of Superior Court and Cause.]

ORDER OF REMOVAL

This matter coming on to be heard upon the motion and verified petition of defendant The Hartford Steam Boiler Inspection and Insurance Company, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, praying that this cause be removed into the District Court of the United States for the Eastern District of Washington, Northern Division, upon notice to the attorney of record for the plaintiff; and

The said defendant also presenting a bond in the penal sum of \$500.00, executed by The Hartford Steam Boiler Inspection and Insurance Company, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, a principal, and The Aetna Casualty and Surety Company, as surety, a copy of which bond has heretofore been submitted to counsel for the plaintiff; and

The Court having examined the aforesaid petition and being satisfied the same is well founded, and having examined said bond and being satisfied the same is in conformity with the law; and

The Court having jurisdiction of the subject matter hereof and the parties hereto, and being fully advised in the premises;

It Is Ordered, That this Cause be and it is hereby removed from this Court and into the District

Court of the United States for the Eastern District of Washington, Northern Division, said defendant having presented and filed simultaneously herewith the aforesaid bond in the penal sum of \$500.00, which bond is hereby approved as to form, amount, principal and surety.

Dated this 2nd day of May, 1947.

RALPH E. FOLEY,
Judge.

Presented by: Alan G. Paine.

[Endorsed]: Filed May 2, 1947. [11]

[Title of Superior Court and Cause.]

BOND

Know All Men by These Present, That The Hartford Steam Boiler Inspection and Insurance Company, a Corporation, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, its successors and assigns, as Principal, and The Aetna Casualty and Surety Company, as Surety, are held and firmly bound unto the Inland Empire Paper Company, a Corporation, plaintiff in the above-entitled action, its successors and *and* assigns, in the sum of Five Hundred (\$500.00) Dollars lawful money of the United States of America, for the payment of which well and truly to be made we, and each of

us, bind ourselves and each of our successors and assigns, jointly and severally, by these presents.

The conditions of this obligation are such that whereas, the defendant, The Hartford Steam Boiler Inspection and Insurance Company, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, has applied by petition to the Superior Court of Spokane County, State of Washington, for the removal of a certain cause therein pending, wherein Inland Empire Paper Company, a Corporation, is the plaintiff, and the Hartford Steam Boiler Inspection and Insurance Company, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, is the defendant, to the District Court of the United States for the Eastern District of Washington, Northern Division, for further proceeding, on grounds as set forth in the said petition, and has asked that all further proceedings in said action in the Superior Court of Spokane County, State of Washington, be stayed.

Now, Therefore, if your petitioner, The Hartford Steam Boiler Inspection and Insurance Company, sued herein as Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a Corporation, shall enter in the District Court of the United States, Eastern District of Washington, Northern Division, within the time provided by law, a certified copy of the record in the above-entitled cause and shall pay all costs that may be awarded

therein by the District Court of the United States for the Eastern District of Washington, Northern Division, if said Court shall hold said suit was wrongfully and improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and effect. [12]

Executed this 1st day of May, 1947.

THE HARTFORD STEAM BOILER INSPEC-
TION AND INSURANCE COMPANY.

[Seal] By PAINE, LOWE & COFFIN,
Its Attorneys.

THE AETNA CASUALTY AND
SURETY COMPANY.

By H. T. ANTHONY,
Its V. P.

Attest:

LeROY B. WAY,
Resident Asst. Secretary.

Received copy of above this 1st day of May, 1947.

WITHERSPOON, WITHERSPOON
AND KELLEY,
Attorney for

[Endorsed]: Filed May 2, 1947.

[Title of Superior Court and Cause.]

CERTIFICATE

State of Washington,
County of Spokane—ss.

I, Robt. A. Wilson, County Clerk and Clerk of the Superior Court of the State of Washington, for the County of Spokane, do hereby certify that the above and foregoing is a full, true and correct copy of the record in the above-entitled case on file in this office, and which I have been directed to prepare and transmit to the District Court of the United States for the Eastern District of Washington, Northern Division.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Superior Court, this 2nd day of May, A.D. 1947, at Spokane, Washington.

[Court Seal] ROBT. A. WILSON,
Clerk.

By NELS PAULSEN,
Deputy.

Filed in the U. S. District Court, Eastern Dist.
of Washington, May 29, 1947.

A. A. LaFRAMBOISE,
Clerk. [13]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division

No. 657

INLAND EMPIRE PAPER COMPANY, a Cor-
poration,

Plaintiff,

vs.

HARTFORD STEAM BOILER INSPECTION
AND INSURANCE COMPANY OF HART-
FORD, CONNECTICUT, a Corporation,
Defendant.

ANSWER

Comes now The Hartford Steam Boiler Inspection and Insurance Company, the defendant in the above-entitled action and misnamed "Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut," by its attorneys, and for answer to plaintiff's complaint alleges as follows:

1. Defendant alleges that the plaintiff, Inland Empire Paper Company, at all times herein mentioned was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington. Defendant admits the allegations contained in Paragraph I of the complaint that it was at all times mentioned therein and now is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, but defendant denies the allegations in Paragraph I that it is

or was engaged, in the State of Washington or elsewhere, in writing liability insurance or other insurance of a general nature, including machinery breakage insurance as such; and defendant denies that it is or was authorized to write such insurance; but, instead the defendant alleges that it writes only a single line of insurance known as Boiler and Machinery insurance.

2. Defendant admits the allegations contained in Paragraph II, except that the defendant denies that plaintiff sustained any loss insured against under the policy which defendant issued to the plaintiff.

3. Defendant admits that on the 5th day of May, 1944, at Spokane, Washington, the defendant, through its authorized representative, in consideration of \$8,914.42, which the plaintiff then paid, executed to it a [14] policy of insurance insuring a Sumner Steam 2-Cylinder Engine with a rating cylinder size of 12 inches, designated as No. 4 on said policy, but denies that it issued a policy of insurance upon certain paper making machinery, as alleged in said Paragraph III; and defendant also denies that the copy of the policy annexed to the complaint, marked "Exhibit A" is a complete copy of the policy which the defendant issued to the plaintiff on May 5, 1944, but defendant admits that the copy of the policy annexed to the complaint does contain copies of all of the Schedules and Endorsements applicable to this case.

4. The defendant denies the allegations contained in Paragraph IV; but instead alleges that

at the time of the alleged loss it had in force at the plaintiff's plant, Millwood, Washington, its policy numbered 97-743, which policy defendant issued to plaintiff on or about May 5, 1944, and that said policy covered certain loss from an "accident" to a designated "object" described in Schedule No. 6, which "object" is defined in Paragraph B(a) of Schedule No. 6 of said policy. The defendant specifically denies that there was an "accident" to an insured "object, or any part thereof," within the terms of said policy. The defendant further denies that it has knowledge or information sufficient to form a belief as to whether the plaintiff suffered the damage, or any damage, as set forth in Paragraph IV and therefore, defendant puts plaintiff to its proof. The defendant alleges that if said plaintiff sustained any damage, as claimed, the same was not the result of an accident to an insured object within the policy terms.

5. The defendant admits the allegations contained in Paragraph V; and further avers that the report of inspection, dated December 16, 1945, which defendant sent to plaintiff on or about December 18, 1945, confirmed the fact that, in accordance with a previous recommendation made by the defendant, the governor of said Sumner engine had recently been equipped so that the mechanism would shut the steam supply off in the event the governor belt should break or run off. Defendant, however, denies any inference that it inspected or approved any object which was not insured under the defendant's policy.

6. The defendant admits the allegations in Paragraph VI that [15] plaintiff notified defendant immediately of the alleged accident and forwarded written notice of the alleged accident to defendant's Seattle office; and admits that defendant's representatives investigated the alleged accident on July 5, 1946; and defendant denies that plaintiff sustained any loss insured against under defendant's policy. The defendant admits that with its knowledge and consent, the Union Iron Works, of Spokane, was called in by the plaintiff, but alleges that this was done without prejudice to defendant's rights. The defendant avers that the alleged appraisal made by said Union Iron Works and the subsequent order given to them by plaintiff was made without prejudice to defendant's rights. Defendant further alleges that the work, which plaintiff avers was done by its maintenance crew, was also performed without prejudice to defendant's rights or defenses in this matter.

7. The defendant denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VII and, therefore, defendant puts plaintiff to its proof.

8. The defendant denies the inference in Paragraph VIII that plaintiff sustained a direct loss, or any kind of loss whatever, as a result of an "accident," under the terms of the policy, on July 3, 1946, or on any other date. The defendant further denies that the defendant requested plaintiff to submit a statement of its alleged loss. Defendant ad-

mits that plaintiff submitted a statement of its alleged loss in words and figures as set forth in said Paragraph VIII of the complaint.

9. The defendant admits the allegations in Paragraph IX that it did not and has not paid the alleged loss, nor any part thereof, and that on or about October 18, 1946, defendant gave written confirmation of its denial of liability under said policy. The defendant assumes that the last sentence in Paragraph IX has a typographical mistake in that it sets forth that "defendant was damaged * * *" when it intended to aver that "plaintiff was damaged * * *". If defendant's assumption is correct in this regard, it denies that plaintiff was damaged as a result of an accident as defined in the policy in the sum of \$16,173.81, or in any sum.

Wherefore, this defendant demands that plaintiff's complaint be dismissed, together with its costs and disbursements in this action.

ALAN G. PAINE,
PAINE, LOWE & COFFIN,
Attorneys for Defendant.

Received copy of above this 29th day of May, 1947.

WITHERSPOON, WITHERSPOON
AND KELLEY,
Attorney for Plaintiff.

[Endorsed]: Filed May 29, 1947. [16]

[Title of District Court and Cause.]

REPLY

Comes now the plaintiff and for its reply to the answer of the defendant denies each and every affirmative allegation, matter and thing in said answer contained.

Wherefore, plaintiff prays for judgment as prayed in its complaint herein.

W. V. KELLEY,
WITHERSPOON, WITHERSPOON
& KELLEY,
Attorneys for Plaintiff.

State of Washington,
County of Spokane—ss.

Myron Black, being first duly sworn, on oath deposes and says:

That he is Mill Manager of Inland Empire Paper Company, the plaintiff in the above cause of action; that he has read the above and foregoing reply, knows its contents and believes the same to be true.

MYRON BLACK.

Subscribed and sworn to before me this 16th day of June, 1947.

W. V. KELLY,
Notary Public in and for the State of Washington,
Residing at Spokane.

Due Service hereof is admitted this 16th day of June, 1947.

PAINE, LOWE & COFFIN,
Attorneys for Deft.

[Endorsed]: Filed June 16, 1947. [17]

In the District Court of the United States for
the Eastern District of Washington, Northern
Division

Civil No. 657

INLAND EMPIRE PAPER COMPANY,
a corporation,

Plaintiff,

vs.

THE HARTFORD STEAM BOILER INSPEC-
TION AND INSURANCE COMPANY,
a corporation,

Defendant.

(Misnamed in the complaint as Hartford Steam
Boiler Inspection and Insurance Company of
Hartford, Connecticut, a corporation.)

RECORD OF PROCEEDINGS AT THE TRIAL
Before: Honorable Sam M. Driver,
United States District Judge.

Appearances: William V. Kelley, of Witherspoon,
Witherspoon & Kelley, of Spokane, Washing-
ton, for the plaintiff; Alan G. Paine, of Paine,
Lowe & Coffin, of Spokane, Washington, for
the defendant.

At Spokane, Washington,
October 7, 8, 9, 10, 1947.

Be it remembered, that on the 7th day of Octo-
ber, 1947, the above entitled cause came regularly
on for trial in the above court at Spokane, Wash-
ington, before the Honorable Sam M. Driver, Judge
of said Court, sitting without a jury; the plaintiff

appearing by William V. Kelley, of Witherspoon, Witherspoon & Kelley, of Spokane, Washington; the defendant appearing by Alan G. Paine, of Paine, Lowe & Coffin, of Spokane, Washington; Whereupon, the following proceedings were had and done, to wit:

Mr. Paine: If your Honor please, might I introduce Mr. [21] Franklin W. Stevenson, a member of the bar of Kentucky, representing the Hartford Company, and ask that he might assist me in the trial only of this particular case?

The Court: Yes, he may do so; permission granted.

(Mr. Kelley made an opening statement to the Court on behalf of the plaintiff.)

(Whereupon, the Court took a recess for the purpose of viewing the property involved in this case.)

Spokane, Washington,
Tuesday, October 7, 1947,
1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

MYRON W. BLACK

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is Myron W. Black?

A. That's right.

(Testimony of Myron W. Black.)

Q. You're the mill manager of the Inland Empire Paper Company, plaintiff in this case?

A. That's correct.

Q. How long have you been with the paper company?

A. About 25 years.

Q. What is your present position with the company?

A. Well, mill manager.

Q. What is your profession? [22]

A. Well, I'm a graduate in chemical engineering, if that's what you mean.

Q. Whereabouts from?

A. University of Washington.

Q. By the way, can you indicate approximately how long you've been the mill manager there?

A. Four or five years.

Q. During that time you've had supervision of the machinery of the Inland Empire Paper in general, and this Sumner steam engine number 4 in particular?

A. Yes.

Q. You might briefly indicate to the Court the location of the paper company and the type of its manufacturing, for the record.

A. Well, it's located, Inland Empire Paper Company's plant is located at Millwood, Washington, approximately seven miles from the center of the city of Spokane, where we're manufacturing newsprint, sulphide papers. During the war, that period, we manufactured considerable paper from waste paper, but at present we're back on the other grades.

(Testimony of Myron W. Black.)

Q. Directing your attention to this number 4 paper machine, what was the type of paper you were manufacturing, if you recall, back on July 3, 1946?

A. It was known as ground wood drawing. [23]

Mr. Paine: I didn't get that.

A. Ground wood drawing paper.

(Whereupon, a photograph was marked plaintiff's exhibit No. 1 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's exhibit 1 for identification, what is that a picture of?

A. It's a picture of the number 4 machine.

Q. The number 4 paper machine?

A. Yes.

Q. Does that picture accurately portray the situation with respect to the number 4 paper machine on about July 3, 1946?

A. There's only one distinctive difference; we've added a new hood.

Q. Does that have anything to do with the issues in this lawsuit?

A. No.

Mr. Kelley: I might say, if your Honor pleases, Mr. Libby took those pictures just a little while ago. I haven't been able to get him.

Mr. Paine: I'll take a look at it. I don't think I have any objection to it. No objection.

Mr. Kelley: To assist counsel I might say that we have little tabs, if they are desired, to indicate which way the camera was facing. I apprehended

(Testimony of Myron W. Black.)

there wouldn't [24] be any question about it. I wonder if for the convenience of the Court as we go through these exhibits whether we might have the tabs attached?

Mr. Paine: It's entirely agreeable to me.

The Court: All right. As I understand, there is no objection to plaintiff's exhibit 1. It may be admitted in evidence.

(Whereupon, plaintiff's exhibit No. 1 for identification was admitted in evidence.)

Q. (By Mr. Kelley): Whereabouts in your plant is the number 4 paper machine as shown on plaintiff's Exhibit 1? Where is that located?

A. Well, it's the most westerly of the three paper machines.

Q. And on what floor?

A. Well, what we normally term the main floor.

Q. The main floor; and what engine runs that number 4 paper machine?

A. Currently known as number 4 engine, or the Sumner engine.

Q. Was that the engine, that now operates it, was that the same engine that was operating it on or about July 3, 1946? A. Yes.

(Whereupon, a photograph was marked plaintiff's exhibit No. 2 for identification.)

Q. Directing your attention to plaintiff's exhibit 2 for [25] identification, will you state to the Court what that is?

A. Well, that's a picture of number 4 engine, or the Sumner engine; practically call it a front view.

(Testimony of Myron W. Black.)

Mr. Kelley: Let Mr. Paine see it.

Mr. Paine: Were there any changes on this set-up since July 3, Mr. Black?

A. No changes that I'm aware of.

The Court: That's the number 4 engine, isn't it?

A. Number 4 Sumner steam engine, yes, your Honor.

Mr. Paine: No objection.

Q. (By Mr. Kelley): By the way, where is that Sumner steam engine as shown on plaintiff's Exhibit 2, where is that located in your plant?

A. It's located in the basement, underneath the paper machine.

Q. Underneath the number 4 paper machine shown in plaintiff's Exhibit 1? A. Right.

Q. And does that picture accurately portray the situation with respect to that Sumner steam engine, on or about July 3, 1946?

A. I believe so.

Mr. Paine: May I just ask one question right there? Was there some tightening of the chain to the butterfly valve? [26]

A. You mean had the valve been tightened up inside?

Mr. Paine: No; on the chain that shows in the picture; were they in the same position on the 3rd?

A. There is no material change between that picture than they were at the time of the accident.

Q. (By Mr. Kelley): How is this Sumner steam engine connected to the paper machine shown in plaintiff's Exhibit 1?

(Testimony of Myron W. Black.)

A. By means of a 22-inch rubber belt to a line shaft.

Q. Where is this line shaft located?

A. Just to the west of the Sumner engine, and extending approximately 140 feet along the west wall of the basement.

Q. What did that line shaft consist of at the time of the accident, July 3, 1946, as you recall?

A. Well, there were the shafting itself, there were eight pulleys mounted on the line shaft, the bearings, sole plates, piers, and couplings.

Q. Well, how far away from the Sumner steam engine was this line shaft in the basement, how far to the west?

A. Oh, approximately 20 feet centers, I think.

(Whereupon, two photographs were marked plaintiff's exhibits No. 3 and 4 for identification.)

Mr. Kelley: I'll renew the offer of Exhibit 2.

Mr. Paine: No objection.

The Court: Admitted. [27]

(Whereupon, plaintiff's Exhibit No. 2 for identification was admitted in evidence.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's exhibits 3 and 4 for identification, will you state to the Court what they portray?

A. Well, both Exhibits 3 and 4 are pictures of the line shaft in the basement of this paper machine. Exhibit 3 is taken from just north of the

(Testimony of Myron W. Black.)

engine driven pulley, facing south, and exhibit 4 is taken just south of the engine driven pulley, facing north.

Q. In other words, both plaintiff's exhibits for identification number 3 and 4 accurately portray the main line shaft which was between the Sumner steam engine and the number 4 paper machine?

A. That's correct.

Q. Exhibit number 3 shows the southern half of the line shaft, and exhibit number 4 shows the northern half of the line shaft?

A. I think so.

Mr. Paine: These were re-assembled or re-built after the occurrence on July 3, weren't they?

A. That's correct.

Mr. Paine: Is that substantially the [28] same as they were before the occurrence?

A. There's one exception; we had one extra pulley on that line shaft previously, which was not replaced.

Mr. Paine: One pulley which was not replaced?

A. That's right.

Mr. Paine: And where was it located? Where would it appear on either of these exhibits?

A. Located approximately—it was on the other side of this column, and it would be on the other side of this pier, so it must be about in there.

Mr. Kelley: Will you indicate to the Court?

A. I believe it was on the other side of this column, and it would be, I believe, over to the side of this pulley. It was either on this side or the other side of that pulley.

(Testimony of Myron W. Black.)

Mr. Paine: The other side of the pulley is the pulley on the shaft approximately in the center of the photograph, just above the belt?

A. That's correct.

The Court: And you're referring to exhibit number 4, there?

Mr. Paine: Exhibit number 4.

A. It doesn't appear in 3.

Mr. Paine: With that understanding I have no objection.

The Court: All right, identifications 3 and 4 will [29] be admitted.

(Whereupon, plaintiff's exhibit No. 3 for identification was admitted in evidence.)

(Whereupon, plaintiff's exhibit No. 4 for identification was admitted in evidence.)

Q. (By Mr. Kelley): Now, how was the main line shaft, which is shown in plaintiff's exhibits 3 and 4, how was that connected with the number 4 paper machine?

A. Connected by means of belts to pulleys on the main operating floor above.

Q. Located on the upper floor?

A. The upper floor.

Q. The same floor that the number 4 paper machine was on?

A. That's right.

Q. Now, the pulleys of the main line shaft connecting with the pulleys upstairs, those pulleys in the basement were called what?

A. Well, those were driving pulleys.

(Testimony of Myron W. Black.)

Q. And the pulleys upstairs were called what?

A. Driven pulleys, sectional driven pulleys.

Q. Will you show the Court by means of exhibit 3 and 4 where those vertical belts are?

A. There's one shown here, there's another one there, it's in the dark, there's the belt on that section, one there, and there's one there that you can see. [30]

Q. Now, with reference to that number 4 paper making machine shown in exhibit number 1, what do you call that paper machine? What is it called?

A. Well, it's the type normally known as the Fourdrinier paper machine.

Q. And that consisted of how many component parts?

A. Well, there's the wire section, the first press, the second press, the third press, the driers, the calendars, and the reels.

Q. I wonder if you would take the time on exhibit 1, directing the Court's attention to those component parts. In fact—do you have a pen with you?

A. Yes.

Q. Maybe you can just label them with a little number, 1, 2, 3, and so forth.

A. This down here would be the wire section.

Q. Just put 1, for wires.

A. All right. This is the first press section in here, that would be 2, second press would be 3, the third press would be 4, and this is the driers, would be 5, and the calender stack and reels do not show.

The Court: That's on number 1.

(Testimony of Myron W. Black.)

Q. In other words, if I follow you correctly, plaintiff's exhibit number 1 shows all the component parts except the reels and the calendar stack?

A. That's right.

(Whereupon, a photograph was marked plaintiff's Exhibit No. 5 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's exhibit 5 for identification, will you state to the Court what that is?

A. Well, this is a picture taken from the—looking towards the northwest, showing the press rolls of the first press and the end of the couch roll. It's a paper making term.

Mr. Kelley: I'll offer plaintiff's exhibit 5 for identification.

Mr. Paine: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit No. 5 for identification was admitted in evidence.)

(Whereupon, a photograph was marked plaintiff's Exhibit No. 6 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's Exhibit No. 6 for identification, will you please state to the Court what that portrays?

A. Well, this is a picture of the couch roll, showing the bottom of the rider roll at the end of the wire section.

Mr. Kelley: I'll offer plaintiff's 6 for identification. [32]

(Testimony of Myron W. Black.)

Mr. Paine: This is up on the paper machine?

A. Yes.

Mr. Paine: No objection.

The Court: Is this number 5 still a part of the number 4 paper machine? A. Yes.

The Court: All of those show parts of the machine.

Q. (By Mr. Kelley): I wonder if you would take plaintiff's Exhibit number 1, which shows the general view of the number 4 paper making machine, and take plaintiff's Exhibits number 5 and 6, and indicate to the Court where the close-ups of 5 and 6 are shown on plaintiff's Exhibit 1?

A. This picture is taken from a spot right about here, and this section right here is this section here.

Mr. Paine: Now, you've got your numbers. Could you just identify them so that the record will show?

A. Number 2 would correspond to what is the press rolls in Exhibit 5, and Exhibit 6 would correspond to number 1 in Exhibit 1.

The Court: I see.

Q. (By Mr. Kelley): Now, the number 4 paper machine located on the main floor, what general direction does that run?

A. Well, the paper moves from north to south.

Q. And the machine itself is located in a generally northerly and southerly direction?

A. That's right.

(Testimony of Myron W. Black.)

Q. Is that located directly over the main line shaft in the basement as shown by exhibits 3 and 4?

A. The line shaft is directly against the wall. The machine is somewhat away from it.

Q. I see but in general they approximate each other in their general direction? A. Yes.

(Whereupon, a photograph was marked Plaintiff's Exhibit No. 7 for identification.)

Q. Directing your attention to plaintiff's Exhibit number 7 for identification, will you state what that is, for the record?

A. Well, the principal item in this photograph is the wire driven pulley.

Q. On plaintiff's exhibit number 7?

A. On plaintiff's—yes, on exhibit 7.

Mr. Kelley: I'll offer that.

The Court: 6 hasn't been offered yet, has it?

Mr. Kelley: I'll re-offer 6.

Mr. Paine: No objection.

The Court: Number 6 will be admitted then. [34]

(Whereupon, Plaintiff's Exhibit No. 6 for identification was admitted in evidence.)

The Court: Did you offer number 7, Mr. Kelley?

Mr. Kelley: Yes.

Mr. Paine: No objection.

The Court: Number 7 will be admitted.

(Whereupon, Plaintiff's Exhibit No. 7 for identification was admitted in evidence.)

(Testimony of Myron W. Black.)

Q. (By Mr. Kelley): Number 7, by the way, can you indicate to the Court whether that shows any pulley leading down through the floor to the main shaft?

A. You mean a belt leading through the floor?

Q. Yes.

A. I can't see any indication of it, though it's there.

Q. I see; is that the driven pulley for the first wire section? A. Yes.

The Court: It would be down below and off the picture?

A. You can see a polish from here, where it has been running, but you can't see the belt.

(Whereupon, a photograph was marked Plaintiff's Exhibit No. 8 for identification.)

Q. Directing your attention to plaintiff's exhibit 8 for identification, will you please state what that is? [35]

A. Well, this is a side view showing a portion of the Sumner engine, showing the Pickering governor, the main inlet steam line, the——

Q. Well, if you'll just identify the picture, and then give Mr. Paine an opportunity—I'll offer plaintiff's exhibit 8 for identification.

Mr. Paine: Mr. Black, is this tightener here, and this tightener pulley on this belt, that's been added since 1946, hasn't it, since July?

A. Not to my knowledge it hasn't been added. I don't believe there's been any additions on to that thing since that time.

(Testimony of Myron W. Black.)

Q. (By Mr. Kelley): By the way, for the record, I think I have covered this, but do exhibits 1 to 7, inclusive, and plaintiff's exhibit 8 for identification, accurately portray the situation as it existed in the paper mill on or about July 3, 1946, the date of the accident, all those pictures?

A. I would say they portray as closely as—without material change.

Mr. Paine: But in regard to this arm and tightening pulley—would you call that a tightening pulley? A. It's a rider pulley.

Mr. Paine: Rider pulley, shown on the left hand side of exhibit number 8, to the best of your recollection [36] you think that was on there at the time of this occurrence, and hasn't been added on since?

A. Yes.

Mr. Paine: But you're not definitely positive as to that? A. No.

Mr. Kelley: I'll re-offer plaintiff's exhibit 8 for identification.

Mr. Paine: No objection.

The Court: Admitted.

(Whereupon, plaintiff's Exhibit No. 8 for identification was admitted in evidence.)

Q. (By Mr. Kelley): By the way, you stated a moment ago something in response to counsel's questioning relative to the Pickering governor. Can you show the Court on Exhibit 8, could you outline for the Court the Pickering governor in ink, or—you don't have a white pencil?

(Testimony of Myron W. Black.)

The Clerk: No; I've got red and blue.

Mr. Paine: There's going to be a great deal of discussion, if your Honor please, about the Pickering governor, and I think it would be preferable if the photograph isn't marked in ink.

The Court: Well, I think you can point it out. I think I know what it is.

Witness: Extending from here through the frames there [37] down around that way, would include the entire Pickering governor as shown in that picture.

Mr. Paine: Just for the record, this object in the right upper center of the picture, consisting of where the balls appear and the mechanism below it.

Q. (By Mr. Kelley): Where is the belt of the Pickering governor? Can you show the Court on Exhibit 8?

A. This is the belt that has been under discussion, here and here.

Q. That belt of the Pickering governor of course is a separate, a different belt than runs the main Sumner steam engine? A. That's correct.

Q. By the way, what is a Pickering governor? Just describe it, if you can, briefly, as shown in plaintiff's Exhibit 8.

A. Well, it's a device intended to maintain a constant speed on a steam engine by means of throttling the incoming steam.

Q. By the way, what was the paper speed of the number 4 paper machine at the date of the accident?

A. 346 lineal feet a minute.

(Testimony of Myron W. Black.)

Q. What does that mean?

A. Well, the paper passing through the machine was traveling at that speed. [38]

Q. You mean the number 4 machine, passing through the number 4 machine?

A. That's correct.

Q. Well, how does that correspond to the engine speed of the Sumner steam engine located in the basement, which was driving the number 4 paper machine?

A. Well, the ratio is approximately 2.52; that is, the speed of the engine in revolutions per minute times 2.52 gives you the paper speed in lineal feet per minute.

Q. In other words, there is a difference between paper speed and the speed of the engine?

A. That's correct.

Q. And there is a constant, fixed relationship between paper speed and the speed of the engine?

A. Yes, within a very slight difference.

Q. And in order to ascertain the paper speed of the number 4 machine you multiply the speed of the engine in revolutions per minute by 2.52?

A. Yes.

Q. Well, briefly, what is the function of this Pickering governor?

A. To maintain a constant, set speed of the engine.

Q. Was there any other control device of the Sumner steam engine at the date of the accident?

A. There was an overspeed stop. [39]

(Testimony of Myron W. Black.)

Q. What do you call that?

A. Well, there's a ball mounted on the flywheel of the pulley—excuse me, a ball mounted on the rim of the pulley, held off by means of a spring. When the centrifugal force of that pulley is such a force that ball towards the rim and overcome the action of the coil spring, it pushes a rod out beyond the rim of the pulley and contacts a trigger, which in turn is connected to a butterfly valve on the incoming steam line——

Q. On the main steam line?

A. On the main steam line, which closes by gravity when the trigger is released on the flywheel.

Q. How far is that stationary trigger to the face of the engine drive pulley?

A. I think within a half to three-quarters of an inch.

Q. What is the butterfly valve?

A. Well, the butterfly valve is a body with a valve, a stop, mounted center, with a pivot, mounted on a pivot, so that the pressure on it does not retard its opening or closing.

Q. Well, what is it used for with respect to the steam line? A. As an emergency stop.

Q. Emergency closing of the steam line?

A. That's right.

Q. Well, directing your attention to—would it show on plaintiff's Exhibit 8? [40] A. Yes.

Q. I wonder if you could show the Court on that exhibit the butterfly valve?

(Testimony of Myron W. Black.)

A. The butterfly valve, this is the pivot of it, a flange on that side, a flange on this side; it's right behind here.

Q. You were in the mill on July 3, 1946?

A. That's right.

Q. You arrived on the premises shortly after the accident?

A. I was on the premises, but not near the machine.

Q. I see. You made an investigation, however, of the Sumner steam engine and the main line shaft and the number 4 paper machine?

A. That's right.

Q. Did the Pickering governor function on the day of the accident?

Mr. Paine: I object to that as a conclusion. I think Mr. Black ought to state when he was there and what he observed. He said he wasn't there at the time of the accident. I'd like to have him place it as to when he was there, and what he first observed.

The Court: I'll sustain the objection on the form of the question.

Q. (By Mr. Kelley): Did you observe any part of the Pickering governor when you arrived at the scene shortly after the [41] accident?

A. No, I can't say that I observed the Pickering governor in detail.

Q. Well, I don't mean in detail, but did you observe the belt of the Pickering governor? Did you see the belt of the Pickering governor?

(Testimony of Myron W. Black.)

A. I saw a broken belt; the Pickering governor belt was broken.

Q. And where was it lying?

A. Where it would normally drop after it was separated.

Q. And where was that?

A. Across the frame underneath the governor. One end was across the frame of the engine.

Q. Will you show on Exhibit 8 the belt of the Pickering governor, once more to the Court?

A. This was the belt.

The Court: That's the prominent belt in the left foreground? A. Yes.

Q. In exhibit 8? A. In Exhibit 8.

Q. That is not the same belt, for example, as shown in Exhibit 4, driving from the Sumner steam engine to the main line shaft? A. No. [42]

Q. Do you have that belt of the Pickering governor?

A. No. We may have the belt, but there are no identifying marks on it.

Q. Well, who has it? Do you know who has it?

A. Well, the break was trimmed off as evidence shortly after the accident, and I do not have the belt nor the break that was trimmed.

Q. By the way, how soon did you come on the scene of the accident?

A. Oh, 10 or 15 minutes.

(Whereupon, a photograph was marked plaintiff's Exhibit No. 9 for identification.)

(Testimony of Myron W. Black.)

Q. You mentioned that the butterfly valve was used for emergency closing of the steam line. Directing your attention to plaintiff's Exhibit 9 for identification, will you state to the Court what that is?

A. Well, that's the hand pull on the main floor connecting to the safety pin on the butterfly valve.

Mr. Kelley: I'll offer plaintiff's Exhibit 9 for identification.

Mr. Paine: No objection.

The Court: Admitted.

(Whereupon, plaintiff's Exhibit No. 9 for identification was admitted in evidence.)

Q. (By Mr. Kelley): How is that connected with the butterfly [43] valve you were discussing a moment ago?

A. By means of a chain through a pipe and to a link on the arm of the butterfly valve.

Q. Does this chain go through the floor above the Sumner steam engine? A. Yes.

The Court: You stop the engine by pulling up on the handle of that rod, is that correct?

A. Yes, sir.

(Whereupon, a photograph was marked plaintiff's Exhibit No. 10 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's Exhibit 10 for identification, what does that exhibit for identification portray? Does that show the chain going through the floor?

(Testimony of Myron W. Black.)

A. That shows the safety chain here, that was under discussion on the previous exhibit, Exhibit 9, where it extends from the floor level down to the governor.

Mr. Kelley: I'll offer Exhibit 10 for identification.

Mr. Paine: Taken from the basement, looking up to the floor where exhibit No. 9 shows the handle going down through a pipe? A. That's right.

Mr. Paine: And then this would be looking from the floor up to the same place? [44]

A. That's right.

Mr. Paine: No objection.

The Court: Number 10 will be admitted.

(Whereupon, Plaintiff's Exhibit No. 10 for identification was admitted in evidence.)

(Whereupon, a photograph was marked plaintiff's Exhibit No. 11 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's Exhibit No. 11 for identification, will you state to the Court what that is?

A. This is a close-up view of the overspeed stop, showing the ball and the trigger.

Q. Is that a picture of what you termed a moment ago the Brownell overspeed stop?

A. Yes.

Q. And will you state once more how that Brownell overspeed stop functioned?

A. The centrifugal force——

(Testimony of Myron W. Black.)

Mr. Kelley: First I'll offer Exhibit 11 for identification.

Mr. Paine: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit No. 11 for identification was admitted in evidence.) [45]

Q. (By Mr. Kelley): Using 11 for illustrative purposes, will you indicate to the Court how the Brownell overspeed stop was supposed to function?

A. Well, the speed of the flywheel being sufficient, the centrifugal force will push this ball out on a pin and overcome that spring. This rod here extends out far enough to catch that trigger, trips the mechanism, and releases this chain which extends up to the butterfly valve, and it closes by gravity.

Q. By the way, had the defendant Hartford Insurance Company ever tested this Brownell overspeed stop before the accident?

A. My understanding, it has been tested a good many times by them.

Q. Well, approximately when was the last, if you recall of your personal knowledge?

A. This I was told by the representative, it was tested in December.

Mr. Paine: Somebody told you?

A. I was told by their representatives, that it was tested in December.

Q. December of what year?

A. 1945.

(Testimony of Myron W. Black.)

Q. Less than six months before the accident?

A. Yes. [46]

Q. How did the representative test it?

A. By speeding the engine to the place where the overspeed stop released the trigger.

Q. Who was the representative?

A. Mr. Olinger.

Q. H. L. Olinger? A. That's right.

Q. Now, what are the ways that you effect an emergency closing the butterfly valve?

A. Well, it's either closed by hand, or this chain from the upper floor or by the overspeed stop.

Q. Or the trigger trip on the Brownell overspeed stop? A. Yes.

Q. As shown on Exhibit 11?

A. Or it can be closed anyplace by pulling the pin link in the chain.

Q. Where are the hand trips located?

A. Well, the one hand trip essentially is located on the operating floor above the engine.

Q. Alongside the driers on the north end of the floor, above the engine? A. That's right.

Q. Once more will you indicate, I think it's on plaintiff's Exhibit 9, to the Court that handle.

A. Well, that's the handle. [47]

The Court: Yes, I remember it.

Q. That day what was your paper speed on the number 4 machine? A. 346 feet per minute.

Q. What grade of paper have you manufactured at the highest speed on the number 4 machine?

(Testimony of Myron W. Black.)

A. Normally we manufacture newsprint at the highest speed on that machine.

Q. And what is that speed, about?

A. I believe the highest speed is about 690.

Q. That's the paper speed?

A. That's the paper speed.

Q. And that is equivalent to how many R.P.M.'s of the Sumner steam engine?

A. Approximately 270.

Q. When was the last time that that paper machine, that number 4 machine, was operated at that speed?

A. I believe around 1941.

Q. Now, after the accident, where was this 22-inch engine belt as shown in plaintiff's Exhibit 4?

A. That engine belt—well, let's see; the shafting pulled north-eastward.

Q. I think 3 would show it better.

A. Well, this is the direction.

Q. Show it to the Court so he understands it.

A. This is the direction, and this shafting, this pulley was twisted and bent, but this hub of the pulley landed somewhere in this spot here, and the belt with it.

Q. You're indicating a box-like structure in the right-hand corner of Exhibit 4, as where the drive pulley of the Sumner steam engine landed?

A. The driven pulley. Normally the belt would be lying in an east-west direction, and after the accident it was lying something like that.

(Testimony of Myron W. Black.)

Q. Well, by "that" what direction do you mean, for the record?

A. Northwesterly; southeasterly-northwesterly.

Q. In other words, was the line shaft going through the engine belt? A. Yes.

Q. And if I follow your testimony correctly, parts of the main line shaft, that is, the hub of the main line shaft engine driven pulley was resting some 10 feet northeast of its original position?

A. That's correct.

Q. As shown on Exhibit 4; and the engine belt was thrown diagonally across the room, is that it?

A. Yes, in that direction.

Q. Was there any noticeable increase of speed in the engine that accompanied the break-up of this machinery? [49]

Mr. Paine: I object to that——

The Court: I'll sustain the objection. I understood the witness wasn't present when the break occurred.

Mr. Paine: 10 minutes after the occurrence was over.

Mr. Kelley: Then at this juncture I wonder if I could interrupt this witness on direct and call some other short witnesses on that specific point?

The Court: I have no objection if Mr. Paine hasn't.

Mr. Paine: No, I haven't.

(Whereupon, the witness Myron W. Black was temporarily excused from the witness stand.)

RALPH O. JANOSKY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is Ralph O. Janosky?

A. Janosky.

Q. And you were the back tender on the number 4 machine at the time of this accident on July 3, 1946?

A. Yes, sir.

Q. By the way, how long have you been employed by the Inland Empire Paper Company?

A. Four years.

Q. And what end of the number 4 paper machine were you working on? [50]

A. I work on the dry end.

Q. What is the dry end, north or south?

A. The dry end is the south end.

Q. The dry end is south?

A. Yes, sir.

Q. And do you recall the accident on July 3, 1946?

A. Yes, sir.

Q. And where were you at the time just prior to the break-up?

A. I was standing at the dry end, just inside the door, a short distance from the calendar stack, alongside of the winder, you might say.

Q. Will you take plaintiff's Exhibit 1 there, and indicate to the Court just about where you were?

A. Well, at the time of the accident I was standing just inside this door, right in here. This would be just past the end of the driers and the calender stack, just beyond that, alongside the winder, just inside this door.

(Testimony of Ralph O. Janesky.)

Mr. Paine: On the extreme left center of the picture? A. Yes.

Q. About how far from the paper machine?

A. I would say approximately 25 or 30 feet.

Q. And how did you first notice anything was wrong?

A. The first I noticed was wrong was the paper snapped off [51] between the driers and the calender stack.

Q. Well, is there anything unusual in that?

A. Well, there's—yes; as a rule it doesn't do that unless there is something the matter.

Q. Well, just tell the Court in your own words what you started to do and where you were when you noticed the machine was running away. Just tell it in your own words.

Mr. Paine: Object to that question, your Honor.

The Court: Well, it assumes the machine was running away, but the Court will consider that part of the question not evidence. Go ahead.

A. At that particular time I was standing, as I said, just inside the door talking to Mr. Janecek, and the paper snapped between the calender stack and the driers, the sheet broke and was running on the floor between the driers and the calender stack; I was talking to Mr. Janecek, and I started to go over to put the sheet back through the calender stack, get it back on the reel, and just as I left to do that I noticed the machine was running faster than it had been, than the speed we were making paper, and as I noticed that, as soon as I noticed

(Testimony of Ralph O. Janosky.)

it was running at a higher rate of speed than we had been making paper, I realized the machine was running off, and I left there and run to the wet end of [52] the driers, it would be to the north end of the driers, to pull the safety pin to stop the engine.

Q. What sound did you hear as you were running to pull the pin?

A. Well, I could tell by the sound of the machine, the regular run of the machine, the speed it has; it was picking up speed, you could tell that by the sound of it; it was gathering speed.

Q. Well, did you pull the safety pin?

A. I arrived at the safety pin at the same time as Mr. George Leitner. Mr. George Leitner came from the wet end; he with some other fellows, machine tenders, were working at the wet end, and they were down there, and George came from the wet end, and we both arrived at the safety pin about the same time; we both took hold of it and pulled it about the same time.

Q. What would you say about the speed of the machine with reference to its paper-making speed, at that time? Was the speed that it was going faster or slower than what it made paper at?

A. It was much faster than we were making paper that day.

Q. What, if anything, did you observe as to the pulp or the stock?

A. Pardon me; do you mean after I got to the wet end?

Q. Yes. [53]

(Testimony of Ralph O. Janosky.)

A. When I got to the wet end the machine was traveling so fast the pulp, the paper pulp, traveling over the felts, the felts were going so fast the felts were flopping and the pulp was flying in the air.

Q. How high was the pulp going?

A. I would estimate it was flying between four and five feet.

Q. Directing your attention to plaintiff's 5, for illustrative purposes, will you indicate to the Court there where you saw the pulp, and the general location of it in the air?

A. Well, the pulp here would be coming from the felts, and in this picture you see the first felt. It was flying here. It comes from the wire to the couch roll through the press, then it travels along on top of this felt to the second felt, takes off right here on to the second felt; well, this felt was flopping in the air and pulp was flying up.

The Court: That's at the left hand of the picture, there?

A. Yes, sir.

Q. Did you hear any noises after you pulled the safety pin?

A. Yes, sir.

Q. And what were they, if you know?

A. Well, there were pieces breaking and pieces flying through the air. I heard pieces hitting on the floor, from in [54] the basement, and I heard pieces hitting on the roof of the upper floor. The machinery was breaking.

Mr. Kelley: You may inquire.

(Testimony of Ralph O. Janosky.)

Cross-Examination

By Mr. Paine:

Q. Now, this pulp comes across there in a sort of a sheet, more or less, wet and cohesive, but not really dried into paper yet, is that it?

A. That's true.

Q. And the felts underneath were flapping maybe a couple of inches, or an inch, something like that, little vibrations?

A. They were flopping more than that, at that speed.

Q. About how much was the felt flapping?

A. Well, I would say it was—I really didn't pay much attention, but I would say it was flopping, I'd say, around six inches.

Q. And that would give an impetus, and pieces of this pulp would fly up in the air? A. Yes.

Q. The whole stream of pulp didn't fly up?

A. No.

Q. Just particles would break off?

A. That's right, it was breaking off.

Q. You didn't really attempt to estimate how far they were going up? It was just breaking off?

A. That's right, it was flying in the air, particles of it. [55]

Q. And you say after you, or Leitner pulled the trigger pin, is that right; you didn't actually pull it?

A. We both took hold of it and pulled it at the same time, then when George left, it seemed to me the engine kept going, and I took hold of the chain the second time, after Mr. Leitner had left, I took hold of it and gave it another pull myself.

(Testimony of Ralph O. Janosky.)

Q. After you and Leitner first took hold of it and pulled up the handle that shows there in number 9, the handle came up through the pipe that it's in, didn't it? A. Yes, sir.

Q. This handle here, you both took hold of that and gave it a pull up maybe a foot, foot and a half, something like that? A. That's right.

Q. And the machine kept operating?

A. Apparently so, yes, sir.

Q. Apparently so, and you went back a second time to give this a pull? A. Yes, sir.

Q. And how long after that was it that the noises stopped and the machine began to slow down?

A. Well, it was after that, when we pulled the safety pin, I left and started shutting the felts off. I started to shut the felts off, and pieces began flying and hitting [56] the roof, and hitting the floor, and I decided that was a poor place to be staying around. I looked around and everybody else was on their way, so I took off, too.

Q. That was a pretty good place to get out of; quite a bombardment was going on; mostly down below, wasn't it, coming up and hitting the floor you were standing on?

A. Down below, yes, sir, and upstairs, too.

Q. Some of the pieces were flying upstairs, around the paper machine? A. That's right.

Q. So after you gave it the second pull and the bombardment was still going on, you decided it was a good place to get out of? A. That's right.

Q. And you did get out of the room?

(Testimony of Ralph O. Janosky.)

A. I didn't leave the room, no, sir. I started to run and as I started to run toward the door, the machine was slowing down, and I didn't leave the room entirely.

Q. You ran towards the door and by that time the machine was coming to a stop?

A. That's right.

Q. And slowing down? A. Yes, sir.

Q. And where did you go after that? Did you go on out of the building, or wait around? [57]

A. No, I stayed around; after it was over I went back and kind of cleaned up a little there, to get ready to lift the presses and the like, to leave the machine, because it wouldn't be running.

Q. Did you do any pulling of a whistle for the engineer? A. Yes, sir.

Q. When did you pull the whistle for the engineer?

A. I pulled the whistle string just after I pulled the safety pin.

Q. After you and Leitner pulled the safety pin, you went over and pulled the whistle for the engineer? A. Yes, sir.

Q. And where is the cord or the thing you pull to whistle for the engineer?

A. It's right near this safety pin; it's right at the same end of the drier; they're right there together.

Q. Maybe five or ten feet away from it?

A. No, not that far.

(Testimony of Ralph O. Janesky.)

Q. And you went over and pulled that four times? A. Yes, sir.

Q. Whistling for the engineer, and after you blew that, did you do something to the clutch levers?

A. Yes, sir, I started to shut the felts off.

Q. That's what you meant before when you said you were shutting the felts off? [58]

A. Yes, sir.

Q. What sort of an operation is that? Do you let out a clutch similar to operating an automobile?

A. No, the clutch operates on a lever; a lever mounted on a shaft that goes under the clutch itself is on the back side of the machine, and that operates from a shaft that comes through under the machine, with a handle on this end that raises and lowers to engage the clutch.

Q. How far is that mechanism from the engineer whistle pull?

A. The one to the third press is right close. The third felt comes right up, you might say, right up to the driers, and the clutch lever for the third press is, I'd say it isn't over about—approximately six feet, six or eight feet from the pin.

Q. So you just had to step over a couple of steps to the clutch lever?

A. That's it; that's to the third one, then the clutch lever to the second press is down below that; the length of the press there would be, oh, I'd say twelve or fifteen feet, probably.

Q. So you went to the first clutch lever and released it and then went on twelve or fifteen feet and released the other clutch lever?

(Testimony of Ralph O. Janosky.)

A. I released the second felt first; I went to the second felt and threw it out, went back to the third, picked it [59] up, and as I picked the lever up to throw the third felt out, I seen the lever from the second fall down in again. I was in a hurry and it just didn't stay up. It started to fall back in again, and I run back to that and by that time——

Q. Things were really popping by that time?

A. Things were popping, and that's when I started to depart.

Q. Did the releasing of the clutches seem to add to the increase of the engine and the noise and confusion down below, when that load was taken off?

A. I wouldn't say that it added much to it. There was quite a bit of popping and breaking going on at that time, so there was noise going on, and I couldn't say whether the machine gained speed. It was going at a terrific speed at that time.

Q. Could you fix about when the first noise of the breaking—first you observed the increase in speed of the machine, and saw the pulp flying, then when was it you first heard the break-ups? I understand that was after you pulled the safety stop with Leitner and had gone back to the clutches, or after the clutches were put in; which was it?

A. Well, the breaking noise, I first noticed it was after the safety chain was pulled.

Q. Well, was it after you had blown the whistle for the [60] engineer? A. I'd say it was.

Q. You say it was after that?

A. I believe so.

(Testimony of Ralph O. Janosky.)

Q. And maybe after you had taken the clutches out?

A. No, I wouldn't say, because—I'd say that the noise was going on at the time that I was throwing the clutches out.

Q. What effect did the pulling of the clutches have on this number 4 paper machine? Did it bring it to a stop or did the slipping back of the clutch keep it going again?

Mr. Kelley: That's improper cross-examination, if the Court please.

Mr. Paine: He's here telling all the facts and circumstances, what he saw. All I asked is what he observed.

The Court: I'll overrule the objection, with the understanding that it's what he observed, and not as to causes, or whether one led to another.

Mr. Kelley: I wouldn't have any objection if the question were framed that way.

The Court: Perhaps you had better re-frame it.

Q. After you pulled the clutches, did you observe anything as to the speed of the paper machine, what happened?

A. The paper machine?

Q. Yes. [61]

A. That would refer there to the driers?

Q. Yes, that number 4 paper machine, on which these clutches operate, is that right?

A. These clutches run the felt, and the driers are operated by a different clutch; there's a different lever that runs those.

(Testimony of Ralph O. Janosky.)

Q. Then what effect did it have, if any, on the felts?

Mr. Kelley: Well, I object to that.

Q. What did you observe in regard to the felts?

Mr. Kelley: If you did.

A. Beg your pardon?

Q. Did you observe any change in the operation of the felts after you operated the clutches?

A. Well, inasmuch as the clutch was thrown out, the felts would slow up, naturally; they'd stop.

Q. Well, "naturally"; what I'm getting at, did you observe whether they stopped or didn't stop?

A. Well, they were stopping. Of course, they don't stop when you throw the clutch out; at the speed at which they were traveling it takes a short time for them to come to a stop.

Mr. Paine: That's all.

Redirect Examination

By Mr. Kelley:

Q. Each part of the number 4 paper machine has different clutches, Mr. Janosky? [62]

A. That's right.

Q. And frequently in the operation of the number 4 paper machine, while you're making paper, it becomes necessary to release these various clutches from time to time? A. That's right.

Q. And that has no effect of speeding up the Sumner steam engine in the basement, does it?

Mr. Paine: Now, I think if Mr. Kelley is going to project into that——

(Testimony of Ralph O. Janosky.)

The Court: That question is leading; I'll sustain the objection.

Q. (By Mr. Kelley): Well, does the normal release of these various clutches in the operation of the number 4 paper machine cause any increase in speed?

Mr. Paine: Well, I object to that. I think you must qualify a mechanical engineer. This boy was operating the machine. I understand he wasn't qualified; all I asked is what he saw the paper machine do.

The Court: I'll sustain the objection.

Q. (By Mr. Kelley): Have you ever observed the number 4 paper machine speed up as a result of throwing out the various clutches from time to time in the operation of the paper machine?

A. No.

Mr. Kelley: That's all. [63]

(Whereupon, there being no further questions, the witness was excused.)

(Short recess)

(All parties present as before, and the trial was resumed.)

GEORGE LEITNER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is George Leitner?

A. Yes, sir.

(Testimony of George Leitner.)

Q. You were the machine tender on the number 3 machine around 2 p.m. on July 3, 1946, at the paper company? A. I was.

Q. Can you show the Court from plaintiff's Exhibit 1 there on the easel just about where you were working at that time?

A. Well, it would be right about here; you see the screens start here; it would be right about here, on the screens on number 3 machine.

Q. You're indicating a spot opposite and to the east of the screen on the number 4 machine?

A. Yes.

Q. And the screen on the number 4 machine is shown in plaintiff's Exhibit 1 in the lower right hand corner?

A. Well, the screens aren't on here. The screens are about [64] here.

Q. I see. How long have you been with the paper company, by the way?

A. It was 1913 or '14. I was under the impression it was 1913, in the spring.

Q. And had you worked on the number 4 machine yourself? A. Yes, I have.

Q. Have you served as back tender of the number 4 machine? A. That's right.

Q. Just briefly, what are the duties of a back tender on the number 4 machine?

A. Well, the back tender does the drying of the paper, and putting the finish on, the calendering of it; has charge of the winding, and when the paper

(Testimony of George Leitner.)

is being brought over from the wet end to the dry end, the back tender does the manual part of bringing it over the machine.

Q. He takes it over the top by hand?

A. He brings it to the rope; of course the ropes take it over, and at the same time the back tender is an understudy to the machine tender. He's always trying to get information, and that's what he's looking forward to.

Q. As the back tender of that number 4 machine you're familiar with its operation? A. Yes.

Q. At the day of the accident, July 3, 1946, did you notice [65] the number 4 machine speed up?

A. Well, at the time of the accident, yes.

Q. What did you notice? What did you observe?

A. Well, you notice the speed; you'd hear the sound; you heard the sound; first you could hear the speeding up, and you could see the speeding up.

Q. Does it have a characteristic sound when it is running at its regular speed?

A. Oh, yes, it has its particular certain drone when its running normally.

Q. And all of a sudden did it have a different sound? A. Very much different.

Q. And what would you say with reference to whether or no the speed increased suddenly or not?

A. Oh, yes.

Q. And what about the noise of the increase in speed?

A. Well, just in a tempo; you have a steady drone, it's a monotonous drone, there's no differ-

(Testimony of George Leitner.)

ence, everything running steady, there's no foreign noises; there's that one drone. When they speed up everything changes.

Q. The noise is louder?

A. Well, I couldn't say the loudness. It's a different tempo, the speed going up, really going up.

Q. Well, at that time did the machine appear to run faster than you had ever seen it run before?

A. Oh, yes.

Q. And are you the same individual referred to by the witness Janosky as going for the safety handle?

A. That's right.

Q. Did you hear this sudden unusual noise that you referred to before you pulled the cord?

A. That's why I pulled it; I heard that noise.

Q. Did you pull the safety chain?

A. I did.

Q. Is that the handle as shown on plaintiff's Exhibit 9; is that the handle you pulled?

A. That's it.

Mr. Kelley: You may inquire.

Cross-Examination

By Mr. Paine:

Q. The noise that you were speaking of that you heard before you pulled this safety chain was the increased noise of the speeding machine?

A. The whole machine you could hear speed up.

Q. That speed-up, like any railroad train or anything else, when it speeds it gives a different tempo to the noise?

(Testimony of George Leitner.)

A. It would be just like driving a car at 5 miles an hour, and you step it up to 40, only it's not gradual; it's right now.

Q. It was fairly sudden, then? How far did you travel to this safety stop? [67]

A. Oh, I'd just say offhand probably 60 feet.

Q. And you and Janosky arrived there practically simultaneously, you think?

A. Well, I just heard Ralph say yes, but things happened, and I just run over and pulled it, and I didn't pay a bit of attention to who was around at all.

Q. And you don't whether Janosky was standing right beside you or not?

A. I didn't pay that much attention. We were having a little difficulty with our machine. I was just going to pull that safety valve and get back to my job.

Q. And it's a chain that goes through the pipe?

A. Yes.

Q. That came up readily as you pulled it, a foot and a half in the air?

A. Well, it pulled up readily, and then whenever it worked you could feel something drag, like it should.

Q. And you felt it operate as it should operate?

A. It felt to me like it should have been operating correctly.

Q. That is, that pin that's in it down below comes out?

(Testimony of George Leitner.)

A. Well, you can't see that from upstairs, but it felt like that might be happening.

Q. You know that's what the arrangement is?

A. That's right; it felt like that's what was going in to [68] happen.

Q. After you pulled that pin out——

Mr. Kelley: He hasn't testified he pulled the pin out.

Q. All right, after you pulled this safety handle that you pulled, did you hear Janosky go blow the engineer's whistle?

A. Well, to be frank about it, things were happening so quick, if you ask me what anybody else was doing but myself I couldn't answer you.

Q. After you pulled on the handle did you hear then the noise of flying or breaking objects, or knocking noises as though things were breaking up down below?

A. Well, it was a little while after; it was pretty quick though.

Q. But there was a lapse of time after you pulled on this before you heard the breaking noises?

A. Yes, there was a little time, because I was getting back already.

Q. Where did you go?

A. I went back to the screens area where I was working; at least I went with that intention of getting back there.

Q. By the time you had gotten back there were things popping pretty badly?

A. Oh, yes, the machine was flying around pretty good then. [69]

(Testimony of George Leitner.)

Q. Was the machine speeded up even more after you pulled on this chain, than before?

A. I think it did; oh, yes, it did.

Q. Increased its speed? A. Uh huh.

Mr. Paine: That's all.

(Whereupon, there being no further questions, the witness was excused.)

DELBERT W. GIBSON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is Delbert W. Gibson?

A. That's right.

Q. And you were the back tender on the number 3 machine on or about July 3, 1946?

A. I was, yes.

Q. At the paper mill, and that's right across from the number 4 machine, as shown in plaintiff's Exhibit 1 there? A. Yes.

Q. That end picture on the easel.

A. Yes, right across.

Q. Where were you at the time of the accident?

A. Standing right just opposite here, over on my own machine.

Q. Across from the couch? [70]

A. From the couch roll, yes.

The Court: Perhaps the record should show what exhibit he pointed to then.

Mr. Kelley: Number 1.

The Court: All right.

(Testimony of Delbert W. Gibson)

Q. (By Mr. Kelley): And how did you first notice something was wrong?

A. Well, I had my back to the machine when it happened.

Q. What machine?

A. To the number 4 machine. I was working on my own job, and I heard an unusual sound, and I glanced around.

Q. What did the sound come from?

A. Well, it sounded to me like just a—you know, take off of the machine, that's the way it sounded to me.

Q. A speeding up of the number 4 machine?

A. That's right.

Q. And was that speed faster than you had ever observed the number 4 machine going, making paper?

A. It was, yes.

Q. And what did you do then?

A. Well, I hollered, and started running for this throw-out, and I see I was beat in going to that, so I turned and tried to give assistance then, and everything I went to everybody else was ahead of me, so I just stayed pat there for a little while. [71]

Q. Was there any other indication of an excessive overspeed of the number 4 machine other than the noise?

A. Well, that rubber roll over the couch roll was throwing stock off the wire. That's the first process of the paper when it comes on the machine.

Q. Well, directing your attention to plaintiff's Exhibit 1 and 5, could you indicate to the Court what you mean by stock jumping off the couch?

(Testimony of Delbert W. Gibson)

A. Well, there's a rubber roll there, and the stock, the speeding up of the machine so sudden, this stock would get lighter on this wire, and then it throws it in the air; it was throwing it up I'd say three or four feet.

Q. What do you call the stock; what is the stock? A. Well, that's the pulp; paper.

Q. Pulp paper? A. Yes.

Q. And had you ever seen that couch roll going that fast before? A. No, I had never.

Q. You had never seen it? A. No.

Mr. Kelley: You may inquire.

Cross-Examination

By Mr. Paine:

Q. The stock at that point is rather wet and mushy, isn't it? [72]

A. That's right.

Q. And the faster this goes the thinner the stock gets, is that right? A. Yes, it does.

Q. And these particles of pulp or wet stock were being kicked up in the air?

A. That's right.

Q. Now, you first started to run down to the safety pull stop? A. Yes.

Q. And you saw that somebody had gotten there ahead of you? A. That's right.

Q. And where did you go then?

A. I started back for the wire drive, the clutch of the wire, and by that time, just as I got there, she blowed up; everything started flying, and I thought it was a good time to leave.

(Testimony of Delbert W. Gibson)

Q. So you started down, and somebody was at the stop, then you turned, came back up by the wire—what do you call the wire?

A. The wire drier.

Mr. Kelley: What direction is that?

A. North from the safety pull.

Q. The machine was still increasing in speed?

A. Yes, it was. [73]

Q. And when you got back up there then you heard the noise of breaking parts down below, and some things were beginning to break upstairs?

A. Well, yes; I think it started flying a little upstairs first. Everything was a matter of seconds.

Q. So you got out?

A. I got out as fast as I could.

Mr. Paine: That's all.

(Whereupon, there being no further questions, the witness was excused.)

EZRA E. COY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is E. E. Coy?

A. E. E. Coy, yes, sir.

Q. And you're stationary engineer at the paper mill?

A. Yes, sir.

Q. And did you have that job on or about July 3, 1946?

A. I did.

(Testimony of Ezra E. Coy.)

Q. By the way, how long have you been with the paper mill?

A. I think it's the 28th of last month was 19 years.

Q. What are, briefly, the duties of the stationary engineer?

A. Well, it's just the duties of any engineer; it's oiling and looking after the engines.

Q. Including this Summer steam engine in the basement? [74]

A. Yes.

Q. That runs the number 4 paper machine?

A. That's right.

Q. Where were you when you first heard the noise of this engine on or about July 3, 1946?

A. I was over at the opposite side of the basement, on the number 2 side, in the southeast corner, near the light engine.

Mr. Paine: Near what?

A. Near the light engine; that's a DC light engine; that's an emergency light they have there, an auxiliary.

Q. Well, what did you do then?

A. When I first heard the noise I thought it was the stack of the number 2 engine. Paper breaking sometimes makes a noise. It was pretty well over my head, just like a position like this from where I was, and I hesitated, probably a couple of seconds only, and then I could tell it was on the other side, and I ran back over to the—I'd just come from that side and I ran back over to that side.

(Testimony of Ezra E. Coy.)

Q. What side is that, for the record?

A. From the east to the west side, over toward number 4 engine, 3 and 4 engines, and I got around in sight of the engine; I had traveled, when I got to the place where I first got in sight of the engine, I traveled about 20 [75] feet toward the engine, and at that time the shafting began to fly, and I didn't go any further.

Q. Were you able to see the flywheel of the Sumner steam engine at all? A. Yes, I did.

Q. And what was its speed?

A. Well, it was so high that it was hard to tell, but it seemed to me that it was at least three or four times as fast as it was running, the running speed at that time.

Q. By the running speed do you mean the normal paper making speed?

A. Well, that was at the speed it was running at that time, something over 300 feet.

Q. And what did you do after the machinery started breaking up?

A. I hesitated just a moment, wondering whether I should go down and try to do something about the engine, but the steam and water was flying there, and I thought the only thing to do then was to go back around to the head valve which is on the east side of the machine, or east side of those two engines, over under number 2 machine, and on the catwalk over number 2 engine, shut off that steam line that runs to number 4.

(Testimony of Ezra E. Coy.)

Q. In other words, if I follow, you ran over to the east side on a catwalk over the number 2 engine and shut off [76] the main steam line that goes to the number 4 engine?

A. That's right.

Q. This flywheel on the number 4 steam engine, at the time you came around the corner there, that flywheel pulley, I believe you said that was going faster than you had ever seen it go before?

A. Oh, yes, very much faster.

Q. Well, after the break-up of the machinery did you remain on the premises?

A. Yes, I did.

Q. Did you remain in the basement room where the Sumner steam engine is located?

A. Yes, I did; I come back directly from shutting off the valve to that side.

Q. After you shut off the valve did you go down in the vicinity of the Sumner engine?

A. I did.

Q. Did you observe the governor belt of the Pickering governor after the accident?

A. Yes, I did.

Q. And where was it?

A. It was down under the governor, on the floor, some of it hanging over the frame of the machine, but underneath the governor.

Q. And under what engine was it? [77]

A. Number 4.

Q. And did you pick up the belt?

A. Yes, I did; I picked up the belt.

(Testimony of Ezra E. Coy.)

Q. Are you the individual who first picked up the belt? A. Yes, I am.

Q. And did you examine it as to its break?

A. Yes, I did.

Q. What was the nature of that break?

A. It was near the metal splicing, and it was a clean break. It was what I'd call, if you understand what I mean, it was a clean break. There was nothing seemingly to cause it, except that it just simply come apart.

Q. Was there any evidence at all it had been damaged by a blow or a cut?

A. Not anything.

Q. Do you have that belt? A. No.

Q. Do you know who has it?

A. No, I don't.

Mr. Kelley: You may inquire.

Cross-Examination

By Mr. Paine:

Q. What are your duties there, Mr. Coy?

A. Engineer.

Q. What time are you on duty, or were you at that time?

A. At that time I was on the day shift, 7 to 3.

Q. 7 until 3? A. Yes.

Q. And this happened on your shift?

A. It happened on my shift, yes, sir.

Q. And you were on the opposite side of the basement when you first heard the noise?

A. That's right.

(Testimony of Ezra E. Coy.)

Q. And you went back, I understand, and got within about 20 feet of the number 4 engine?

A. No, that's not right. When I got within—when I first got to the point where I could see number 4 engine I traveled about 20 feet before I stopped.

Q. I didn't want to confuse you; I misunderstood you. After you got to where you could get a view of the number 4 engine you traveled about 20 feet before you stopped?

A. Yes, that's right.

Q. And about how far away from the number 4 engine were you then?

A. Well, not over 45 or 50 feet.

Q. About 45 or 50 feet away from the engine?

A. It's possibly 60, but that would be the most.

Q. Well, was it from that point that you were observing the speed of the flywheel on the engine?

A. That's right.

Q. About 60 feet away? [79]

A. I'd rather say—I'll put it at 50 feet. I believe that's nearer right.

Q. From a distance of about 50 feet you made the observation of the speed of the flywheel, which you thought was going about three or four times faster than it had been prior to this occurrence.

A. Yes, sir.

Q. That's just an estimate on your part, of course?

A. That distance is just an estimate, yes.

(Testimony of Ezra E. Coy.)

Q. Well, and the speed was just an estimate?

A. Yes, it was. I had no way of measuring it, but I'm pretty familiar with the speeds we have, so I don't think there's any doubt about it.

Q. Well, how many revolutions per minute do you think the engine was going then?

A. I would say at least eight or nine hundred; eight hundred at the least.

Q. About eight or nine hundred. A. Yes.

Mr. Kelley: Do you mean revolutions per minute, Mr. Paine?

Q. In RPM's? A. Yes, I'd say so.

Q. Well, now, there's an automatic stop device on that flywheel, isn't there? [80] A. Yes.

Q. And that stops it at 250, doesn't it?

A. 250 revolutions per minute?

Q. Uh huh.

Mr. Kelley: Now, if your Honor please——

A. I don't know for sure.

Mr. Kelley: ——this is improper cross-examination with this witness.

Mr. Paine: Well, he's the engineer in charge there in the basement, and is testifying as to the speed of this engine.

The Court: I'll overrule the objection. He can testify if he knows. If he doesn't he can say so.

A. I don't know; I couldn't answer that question; at that special time I couldn't tell you.

Q. (By Mr. Paine): What?

A. At that time I couldn't tell you what this automatic would stop it at.

(Testimony of Ezra E. Coy.)

Q. You're the engineer in charge of that engine, aren't you? A. Yes.

Mr. Kelley: I object to that, if your Honor please; he's arguing with the witness.

Q. I just want to find out; are you the engineer in charge of that engine?

The Court: Are, or was? [81]

A. I was at the time, yes.

Q. The engineer in charge of the engine?

A. Yes.

Q. You know it is equipped with an automatic device on the flywheel? A. Yes.

Q. And do you know what that's adjusted to operate at?

A. I didn't, not at the time; I don't know just what it was adjusted at, no, sir.

Q. Well, do you mean just at that moment, or what do you mean; just not at the time?

Mr. Kelley: I'll have to object to this, if your Honor please. The witness said he didn't know.

A. The fact is——

The Court: Well, wait a minute. I'll overrule the objection. You're inquiring now as to what time he means.

A. No, I don't know what time it was, or what speed it was going, what revolutions per minute it was that it would trip at; I couldn't tell you.

Q. Well, had you ever tested the device, or set it?

A. Yes, sir; we hadn't set it, but we had tested the device. I hadn't helped to set it, but I helped to test it.

(Testimony of Ezra E. Coy.)

Q. And at what speeds was it tested? [82]

A. I don't know.

Q. You don't know that? A. No.

Q. Do you know what the purpose of that device on the wheel was?

A. Yes, the purpose is to shut off the steam in the engine.

Q. When the engine began to overspeed?

A. That's right.

Q. And how much overspeed was the engine supposed to get before the device would shut it off?

Mr. Kelley: Object to this as not proper cross-examination, if the Court please.

The Court: I think he said he didn't know. I'll overrule the objection.

Mr. Kelley: To expedite matters, your Honor, your Honor permitted the interruption of the testimony of Mr. Black, to some extent on this, to permit the testimony of the witnesses as to the increase in speed of the number 4 engine, for which purpose they are primarily called.

The Court: Well, I understand that. I'll overrule the objection.

Mr. Paine: Would you read the last question?

(Whereupon, the reporter read the last previous question.) [83]

Mr. Kelley: He's already answered, if your Honor please, several times that he didn't know.

The Court: I'll overrule the objection. He can say it again.

A. (Witness): Now, what is it you want next?

The Court: Read the question.

(Testimony of Ezra E. Coy.)

(Whereupon, the reporter again read the last previous question.)

A. (Witness): How much overspeed supposed to get before the device would shut it off?

Mr. Kelley: Do you understand the question?

A. Yes, it's practically the same question.

Mr. Kelley: Well, I thought so too.

Mr. Paine: Let the witness answer without Mr. Kelley's interjecting here.

A. I don't know exactly, so I couldn't answer it.

Q. (By Mr. Paine): Could you give us approximately? I don't want it down to one revolution a minute, Mr. Coy.

A. Well, it's supposed to shut off at less than 300; that's the best answer I could give you.

Q. That's entirely satisfactory; and it was going, as you estimated it, at about 800; that's what you said, wasn't it?

A. Yes, that's what I said.

Q. Now, you then decided—was Mr. Janecek there at the [84] time?

A. He came down after the break, yes.

Q. He came down after the break, and before you left to shut off the steam valve?

A. Oh, no, not before I left to shut off the steam valve. I didn't see him until after I shut off the steam valve.

Q. You're sure about that? You didn't have any conversation with him before you shut off the steam valve?

(Testimony of Ezra E. Coy.)

Mr. Kelley: I object to this, you Honor. This is certainly improper cross-examination.

The Court: Who is that?

Mr. Paine: The superintendent, who is going to be a witness.

The Court: I'll overrule the objection.

Q. (By Mr. Paine): When did you first see Mr. Janecek down there?

A. Oh, it was just a few minutes, probably not over five minutes, right soon after I got back over to number 4 engine; after I shut off the steam valve, Mr. Janecek was there. That's only a few minutes, only four or five minutes.

Q. But you don't think you saw him before you shut off the steam valve?

A. No, I had no conversation with him before that.

Q. Now, it's quite a ways to the steam valve, isn't it? You [85] go up through a catwalk and around to the other side of the building?

A. From where I started, after I stopped, from where I saw the engine speed, I should say it's around 175 feet, 150 feet, around to the other engine, and then there's only a few steps to where I shut the valve.

Q. Well, the noise had pretty well subsided, the noise of the breaking parts, by the time you got to the valve?

A. Well, far as I know, outside of the steam, yes, the noise had stopped.

(Testimony of Ezra E. Coy.)

Q. By the time you got to the valve there was still some noise of the escaping steam, but all the noise of the breaking parts had stopped?

A. Yes, as far as I know; I couldn't be sure of that, though; I mustn't answer that directly, because I went around to the other side; I couldn't hear it so well.

Q. You're a little deaf, too, are you?

A. A little bit.

Q. Anyway, you didn't hear it, is that right?

A. I didn't hear anything but the steam escaping when I got around to the valve.

(Whereupon, a short piece of belting was marked defendant's Exhibit No. 12 for identification.)

Q. I show you what's been marked for identification as [86] defendant's Exhibit 12, Mr. Coy, and ask you if that looks like the piece of belting that was broken when you last saw it?

A. Yes, that looks something like it.

Q. It was that type of belting or that type of fastening?

A. It was that type of belting and that type of fastening, yes, sir.

Q. You wouldn't want to say for sure that it was or wasn't, I presume, but it does look like it?

A. It looks like it, yes.

Q. And does the break in it look like the break that you last saw?

A. Very much like it, yes.

Mr. Paine: I think that's all. I'll identify it later.

The Court: Yes.

Mr. Kelley: Are you offering it?

Mr. Paine: No, I'm not offering it at this time, Mr. Kelley. That's all.

The Court: Are you through with this witness?

Mr. Paine: Yes, your Honor.

(Whereupon, there being no further questions, the witness was excused.)

RICHARD C. DAVIS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: [87]

Direct Examination

By Mr. Kelley:

Q. Your name is Richard C. Davis?

A. Right.

Q. Were you the machine tender on the number 4 paper machine in the Inland Empire Paper Company at the time of the accident we're talking about, July 3, 1946? A. I was.

Q. By the way, how long have you been a machine tender?

A. At this time it's four or five years.

Q. What occupation have you followed in your adult life?

A. Well, I've followed paper making the biggest part of my life.

(Testimony of Richard C. Davis.)

Q. How long have you worked around paper mills?

A. In the neighborhood of 30, 32 years.

Q. Directing your attention to the afternoon of July 3, 1946, whereabouts were you when the accident occurred?

A. I was across the aisle, between number 3 and number 4 machines, and between the bird screens on the number 3 machine.

Q. I wonder if you could indicate to the Court briefly with the use of a pointer, directing your attention to plaintiff's Exhibit 1, whereabouts you were, if that shows enough space?

A. Number 4 bird screens are sitting ahead of the paper machine, and number 3 are across the aisle from it. [88]

Q. Is there another exhibit there that shows the position that you refer to on the number 4 machine better?

A. No, there isn't.

Q. How about Exhibit 5, press rolls of the first press?

A. Well, it does show the bird screens in this picture, and it's across to the east.

Q. I see. You may take the chair. How did you first notice anything unusual?

A. Well, someone had whistled, and whistling is a means of attracting other people's attention when there is something wrong.

Q. Was the number 4 machine—was or was not the number 4 machine running away at that time?

A. Well, it must have been, because——

(Testimony of Richard C. Davis.)

Mr. Paine: I'll object to that.

The Court: I think that might be objectionable. You can ask him what he observed, and what was happening there.

Q. (Mr. Kelley): What did you observe with reference to the speed of the number 4 machine at that time?

A. At the time I turned around I noticed the stock was being thrown by the breaker roll on number 4 couch.

Q. And what with respect to the wire of the number 4 machine?

A. And it appeared to be going at an unusual rate of speed. [89]

Q. Can you show us on plaintiff's Exhibit 4, I believe, with the use of that exhibit, what you observed there, and explain to the Court in your own words?

A. It would be number 1, wouldn't it?

Q. Yes, Plaintiff's Exhibit 1.

A. We have a rubber breaker roll riding on top of the couch, and the stock running down the wire was being thrown in the air by this rubber roll.

Q. How high was that pulp being thrown?

A. Well, from the angle in which I was standing, or located, it looked to be three or four feet high.

Q. You mean from the roll itself? A. Yes.

Q. Three or four feet above the roll itself?

A. Yes.

(Testimony of Richard C. Davis.)

Q. By the way, what is your best estimate as to how high that roll, that couch roll, is from the floor?

A. I don't believe it's over three and a half feet.

Q. Well, then, what did you do?

A. I got down off the bird screens and run for the starting lever on the wire.

Q. You mean the starting lever on the clutch of the number 4 machine?

A. The starting lever, yes.

Q. Directing your attention to Exhibit 5, can you indicate [90] where that was?

A. The starting lever?

Q. Yes.

A. This is the starting lever right above the pointer. It is located north of the couch roll, about three feet.

Q. I wonder if you'd just take a pen and mark "D" at that point on that exhibit, Exhibit 5?

A. Just below?

Q. Make a "D" at the point where the starting lever on the clutch is there.

A. It isn't very plain.

Q. You may have the chair, Mr. Davis. You are familiar with the paper speed of that number 4 machine at the time of the accident?

A. Yes, I am.

Q. And what was that paper speed?

A. 346.

Q. Will you explain to the Court what you mean by 346?

A. That 346 linear feet per minute. That is the rate of the paper when it is finished.

(Testimony of Richard C. Davis.)

Q. That was the speed that that number 4 machine was set to operate for this grade paper?

A. That's right.

Q. And how fast would you say the wire of the number 4 machine was traveling before that machinery broke? [91]

A. Well, it would be my estimate that it would be in the neighborhood of 2000 feet.

Q. That, as far as you're concerned, is just a guess, though?

A. Yes, it's just a guess.

Q. In any event, with respect to the speed of that number 4 machine, was it going faster than you had ever saw it go before, making paper?

A. Yes, it is.

Q. Did you observe any pulleys going in the air from the number 4 machine at that time?

A. Well, it is fairly hard to estimate what all a person does see in a spot of that kind. A person sees lots of things.

Q. Well, do you recall seeing any pulley?

A. No, I can't say that I ever saw parts of pulleys, although it might have been.

Q. Do you recall ever seeing the wire pulley going?

A. No, I can't say that I did.

Q. But you saw this pulp in the air?

A. Yes.

Q. You know that some of the pulleys exploded, but you don't know which ones, is that it?

A. That's right.

Q. And you don't know which exploded first?

A. No.

(Testimony of Richard C. Davis.)

Q. Well, why did you throw the clutch out?

A. Well, it's just instinct, I think, when a person's in trouble, to try to stop and save some of the machinery.

Q. You wanted to save the wire from excessive speed?

A. From damage, if possible.

Q. From damaging what?

A. From damage.

Mr. Kelley: You may inquire.

Cross-Examination

By Mr. Paine:

Q. This whistle you heard, was that somebody whistling, or was it the engineer's whistle?

A. No, it was one of the workers had whistled.

Q. Did you hear the engineer whistle being blown?

A. No, I didn't.

Q. You have no recollection of that?

A. No, sir.

Q. And this 2000 feet a minute is just as Mr. Kelley says, a guess on your part?

A. That is absolutely all.

Q. You don't know what effect such speed would have on the machinery, or anything of that sort?

A. No, I don't.

Q. And there was no damage to the number 4 machine itself, the paper machine? [93]

A. Sir?

Q. There was no damage to the paper machine itself; the damage was all to the line shaft and pulleys, wasn't it?

A. No, there was clothing losses on the machine.

(Testimony of Richard C. Davis.)

Q. There was what?

A. The clothing on the machine was damaged.

Q. Clothing?

A. Yes, we call the wires and the felt the clothing of the machine.

Q. And when you pulled this clutch had things begun to pop downstairs at that time, or did that start right afterwards?

A. Well, I wouldn't guess on that, either. I don't know.

Q. You don't know; and do you know whether the noise increased after the pulling of the clutch?

A. Well, it was all just about the same time, I think, as far as I can recollect.

Q. Did I undertand, did you go out of the room?

A. I didn't leave the room, no. I started out, but it was all over before I got anywheres near the door, so I stopped.

Q. Was the steam still escaping down below?

A. The steam was escaping from the engine, the broken pipes.

Mr. Paine: That's all. [94]

Redirect. Examination

By Mr. Kelley:

Q. Normally does that machine speed up or slow down when you throw out that clutch which is designated by point "D" on Exhibit 5?

A. It very seldom does.

Q. By the way, what would be the maximum speed for this wire on the number 4 machine, on any grade of paper?

(Testimony of Richard C. Davis.)

A. I think 700 feet would be plenty high on that, although we used to run normally between 760 and 780.

Q. That was a number of years ago?

A. Yes.

Q. Five, six, seven years ago?

A. All of that.

The Court: I'm not sure that I understand what the witnesses mean when they refer to these clutches. Is that a device for disconnecting part of the machine, or the machine, from the power?

Q. Will you explain what you mean by the clutches?

A. We have independent clutches on each section of the machine, and disengaging these clutches is the same as pushing in the clutch on your automobile; it frees it.

Q. It neither increases or decreases the speed of the engine? No, sir.

The Court: It frees the machinery from the power? [95] A. Yes.

Mr. Kelley: I'm sorry, I didn't catch your question.

The Court: I asked if he meant it freed the machinery from the power, and he said yes.

Mr. Kelley: That's all.

Recross-Examination

By Mr. Paine:

Q. When you took the load off, it might cause the engine to speed, not the paper machine?

A. Yes.

(Testimony of Richard C. Davis.)

Q. Just the same as when you take your foot off the clutch of your automobile, the engine might increase a little?

A. It might increase the speed a little, but the governor is supposed to slow that down again.

Q. Disconnecting the clutch would increase the speed of the engine? A. Yes.

Q. And this operation at 760, 780 feet a minute, while you haven't made that type of paper recently, this machine is built to operate at that speed, and has operated satisfactorily at that speed, isn't that so? A. That's right.

Mr. Paine: That's all.

(Whereupon, there being no further questions, the witness was excused.) [96]

JEROME L. JANECEK,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. What is your name, please?

A. Jerome L. Janecek.

Q. And you are the superintendent at the Inland Empire Paper Company? A. Yes, sir.

Q. And you were occupying that position on July 3, 1946, at the time of the accident we're discussing here, is that true? A. Yes.

Q. How long have you been with the paper company? A. Since 1936.

(Testimony of Jerome L. Janecek.)

Q. How long have you been in the paper mill industry? A. Since 1908.

Q. Whereabouts were you at the time of this accident?

A. Between number 3 and 4 machine.

Q. At what end?

A. At the very south end, just ready to leave.

Q. Will you take the pointer, and directing your attention to plaintiff's Exhibit 1, show the court where that is again? [97]

A. Number 1?

Q. Yes, that's the first exhibit on the end there.

A. This one?

Q. Yes. A. 'Way back at that end.

Q. What were you doing at that time?

A. Talking to Mr. Janosky, the back tender.

Q. He was the back tender of what?

A. Number 4 machine.

Q. And what occurred at that time?

A. The paper broke on his machine, at the dry end.

Q. What end is the dry end, the south end?

A. South end.

Q. And what did you do?

A. Well, I motioned to him, because I was facing the machine. He had his back to it. He turned around and left to take care of it.

Q. Which way did he go?

A. Northerly, mostly north, slightly west, to get to his machine.

Q. Toward the wet end?

(Testimony of Jerome L. Janecek.)

A. Well, toward the wet end, but his work was at the dry end at the time.

Q. Well, as you saw him going toward the north end, what did [98] you do?

A. Well, I turned around to leave the room, then I thought I'd take a look and see how he was getting along, or if there was anything wrong, and instead of him threading the paper through the stack the way he should, why, he started to run the other end.

Q. What end is that?

A. That's the wet end.

Q. And then what did he do?

A. I beg your pardon, I didn't get your question.

(Whereupon, the reporter read the last previous question.)

A. What did the back tender do?

Q. Yes.

A. Well, he ran toward the other end.

Q. Did you notice whether he went for the safety chain or not?

A. Well, at the time, I didn't know that he went for the safety chain, no.

Q. Well, what did you do then?

A. Well, I just happened to come from the wet end and I knew that Davis, who's supposed to be running that machine, was assisting over on number 3, and I figured that he probably wouldn't be able to get over there quick enough to take care of whatever was wrong, so I ran down to the [99] other end behind Janosky.

(Testimony of Jerome L. Janecek.)

Q. Well, whereabouts were you at that time with respect, for example, the couch roll of the number 4 paper machine?

A. Well, on the way down to the wet end I didn't know really why I was running. I knew that there was some good reason why he was going down there, and the machine is operated in sections, so as I was running down to the other end I was trying to analyze just what was wrong, why he was in such a hurry to get there, so I ran about until I got about fifty feet from the couch roll when I noticed that the machine was running away.

Q. What machine was that?

A. Number 4.

Q. How was that manifest? What fact showed you that it was running away?

A. The increase in the noise, and somewhat of the change of whine, tone, gears, and the fact that the felts and wire were fluttering and the couch roll was throwing stock into the air.

Q. What do you mean by the felts and wire fluttering?

A. Well, when there's an excessive speed on those felt rolls and the wire reels, why, they begin to whip. The felts and wires are a continuous blanket, or the same as a continuous blanket, and if the rolls are whipped it would cause the felt or wire to flutter. [100]

Q. You say you saw pulp being thrown in the air?

A. Yes, sir.

(Testimony of Jerome L. Janacek.)

Q. Where were you with respect to the couch roll of the number 4 machine when you observed pulp being thrown in the air?

A. Oh, about 45 or 50 feet south of it, in the aisle.

Q. Can you show the Court from any of these exhibits, from Exhibit 6, for example, or 5, can you show the Court where the couch roll is on 5?

A. This is the bottom couch roll right here.

Q. And when you saw the pulp being thrown in the air where were you with respect to that spot?

A. Here's the center of the aisle. I'd say I was over three quarters of the way east from this machine, and this way about 50 feet.

Q. Can you indicate on that picture where you were, or would that allow enough space?

A. Well, in this direction. Here's the first felt. That occupies the space from here to here, and from there further along this same direction is the second felt, and over above it is the third felt. The two felts don't take up much more space there than this one does alone. Well, I was opposite those two felts.

Q. Well, directing your attention, for the record, to these pipes where my pointer is indicating on Exhibit 5, what [101] what are those called?

A. Those are water legs on a suction system.

Q. Now, where with reference to those water legs did you observe pulp being thrown in the air, as you faced the couch roll on the number 4 machine?

A. This is the face of the reel. Back of that is the couch roll, which is the same, parallel to that and about the same face, so as you'll see, this is a

(Testimony of Jerome L. Janecek.)

diagonal picture. Part of the couch roll is sticking out here. The lumps were cast up in here, and crossed this full area here.

Q. About how high were they going?

A. I'd say about four or five feet.

Q. Well, just to fix it for the record, for identification, directing your attention to Exhibit 5, a picture of the press rolls of the first press, and particularly to this piping that runs in a general easterly and westerly direction, how much higher, if higher, was the pulp being thrown with respect to that piping, for example?

A. I should say ten inches above that hand rail. It was above the hand rail.

Q. Do you know how high that hand rail is from the couch roll, for example?

A. I'd say it is four feet. That's four feet above where the paper should normally come out. The paper should come out between the two couch rolls, the top and the [102] bottom. The couch roll is twelve or fourteen inches in diameter.

Q. Did you observe any driven wire pulley damaged?

A. Yes, sir.

Q. Whereabouts?

A. The wire pulley sets under the—on my right here.

Q. You're indicating now the water leg on Exhibit 5?

A. Yes, counting from left to right, or south to north, the wire pulley is nearer the right end of those two water legs, that is, of those several water legs.

(Testimony of Jerome L. Janecek.)

Q. Did that driven wire pulley damage any of those water legs, by the way?

A. It damaged two of them seriously, and some small piping on one, at least one, of those others. That's numbers 1, 2 and 3.

Q. Directing your attention to Exhibit 7, is that a picture of the wire driven pulley you're referring to?

A. Yes, sir.

Q. Did you observe the driven wire pulley that's set forth in plaintiff's Exhibit 7, was that hurled in the air?

A. Yes, sir.

Q. And when did you make that observation, with reference to when you first saw the pulp being thrown above the couch roll?

A. Well, I was running, and just as I realized that it was [103] that the machine was running too fast, and saw this pulp, and saw the reason for it, realized what the reason was, that this pulp was flying in the air was an overspeed, just then the wire, or the first felt pulley went up in the air.

Q. You saw the pulp being hurled in the air before you ever saw the wire pulley go in the air?

A. That's right.

Q. You mentioned this speed. Was that number 4 machine going faster than it ever had gone before, making paper?

A. The fact that the pulp was flying in the air indicated that it was.

Q. What did you do then?

A. I turned for the safety chain, which by that time I had passed, but I found that Janosky and

(Testimony of Jerome L. Janecek.)

Leitner, and it seems to me there was one or two others there already, and I had done that, of course, just as I stopped, I started to do that when this pulley exploded. Well, when these one or two pulleys exploded on the wire or the first press, instantly after that there was another explosion to my left. I thought it was the third press pulley, which should have been just about to my left, but I didn't see anything go up in the air. Later I concluded it must have been the explosion downstairs.

Q. By the way, how do the operators keep check with the [104] speed of the number 4 paper machine when it is running? How do they do that?

A. By counting the revolutions of the drier or the bottom calender roll.

Q. And did you go down to the basement where the Sumner steam engine was located, after the accident?

A. Well, the first thing I did when those two explosions had occurred, why, I was afraid that the engine might come up through the floor, so I started to leave there, and I went toward the dry end again, and by the time I got to the dry end, why, the worst of it was over.

Q. That's the south end of the number 4?

A. That's the south end, where I had originally started from, and by that time the chemist had showed up at that particular place, and I sent him over to the boiler room to have the steam shut off of that side of the mill.

Q. Who was he?

A. A fellow by the name of Lovegrin.

(Testimony of Jerome L. Janecek.)

Q. Where is Lovegrin now?

A. Oh, he's left our employ about eight or ten months ago, and he's someplace in Pennsylvania.

Q. And did you go over to the Sumner steam engine yourself?

A. I went downstairs right after that.

Q. What did you notice with respect to the Pickering Governor of the Sumner steam engine?

A. Well, at first there was a lot of water and steam flying around, and it was quite cloudy, and I couldn't make out anything except parts of the engine through the fog and water, but shortly after that, why, it cleared up, because meanwhile Coy had gone over and had shut the steam off of number 3 and 4 machines, and by that time, why, we got over to the engine, that is, we could see the engine.

Q. You were able to make observations?

A. Yes, and it was running along slowly, just idling.

Q. And what with respect to the Pickering governor? Was that or was that not tripped?

A. Well, the overspeed was tripped.

Q. By the overspeed you mean the Brownell overspeed stop? A. Yes.

Q. What about the Pickering governor itself?

A. It wasn't tripped.

Q. Did you notice the belt?

A. The belt was broke.

Q. What about the safety chain? Directing your attention to Exhibit 10, a picture showing the chain

(Testimony of Jerome L. Janeczek.)

going through the floor to the Sumner steam engine, had that safety chain pulled the pin?

A. No, the pin didn't quite pull clear out.

Q. Well, what did you do with respect to that machinery right then, yourself? Did you touch it?

A. Well, I asked Coy to shut it down. He had to shut the throttle off.

Q. By the way, when did an insurance representative get to the scene of the accident?

A. Oh, I can't remember now, but four o'clock would be my guess.

Q. That same day? A. Yes.

Q. By the way, there's been some talk here about the number 4 machine operating speed. What speed was it that day?

A. The speed of that machine?

Q. Yes. A. About 345.

Q. And when was the last time the machine had ever operated at a higher speed?

A. Well, you mean a higher speed, or a maximum speed?

Q. No, a higher speed of making paper; 690 lineal feet, for example.

A. Well, when we ran out of wood about 1941 we had to change our grade, and we went on to waste paper and various war grades, and that put us off of news, and news was the one grade that we run at those speeds.

Q. Well, since 1941 what speed have you been running that number 4 paper machine?

A. From about 75 to 450 feet. [107]

(Testimony of Jerome L. Janecek.)

Q. And most of it under 400 feet?

A. Most of it under 400 feet.

Q. If the Brownell overspeed stop were set at, for example, 700 lineal feet, that wouldn't interfere with the operation of your paper machine?

A. At any speed below that, no.

Q. What is and was the top speed of that number 4 paper machine?

A. I've run it about 680, 690 feet, but there was a time before I came when they ran it on a different—

Q. Well, I'm not talking about before you came. I mean of your own personal knowledge, and you've been there since when? A. 1936.

Mr. Paine: I don't think he gave the answer. He started to, but I don't think he finished the answer.

The Court: How long had he been there?

Mr. Paine: No, the top speed that it had been run since he had been there.

The Court: I understood him to say 690 feet.

A. 680 or 690 feet.

Q. Did you stop the third and second felts yourself? A. No.

Mr. Kelley: I think that's all.

Cross-Examination

By Mr. Paine:

Mr. Paine: Is this all the testimony you expect to put on by Mr. Janecek, or do you expect to call him after Mr. Black?

(Testimony of Jerome L. Janecek.)

Mr. Kelley: No. I don't know what we'll present in rebuttal.

Q. (Mr. Paine): Now, you were upstairs talking to Mr. Janosky when things began to happen, is that right? A. Yes, sir.

Q. And you turned to go out, and he started up to this safety trip device that works on the butterfly valve?

A. He really started to re-thread the machine.

Q. To what?

A. He really started to re-thread the paper through the machine.

Q. Yes, then you saw him turn and start running up alongside the machine?

A. That's right.

Q. And you wondered what he was running up there for, and by that time the noise began to increase, did it?

A. I hadn't noticed it, because I was expecting something entirely different; the paper could break on the other end, those felts running off, or various reasons, and that's what I was afraid of, that maybe a felt was running off.

Q. And then what finally caused you to start going up to [109] the other end?

A. What prompted me to go to the other end?

Q. Yes.

A. The fact that he was going down there in such a hurry, and Davis wasn't over there to help him; I didn't think Davis might get over there, could get over there, as fast as I could.

(Testimony of Jerome L. Janecek.)

Q. And by the time you got up to where the safety stop device was, you say there were men already there?

A. Well, I passed that, because I didn't look to see why Janosky turned. I went straight ahead.

Q. And then you did turn and see that he was down at the safety valve? A. That's right.

Q. And what happened after that? Was that when this first explosion took place?

A. That's right.

Q. And then you heard another following that, on your left?

A. Immediately after the first one.

Q. And you thought maybe the engine was going to blow up, or something?

A. I expected that to be next.

Q. And you turned then and went to the end of the room, to get out?

A. The south end, where I'd come from. [110]

Q. And when you got down towards that end, the commotion was dying down?

A. The noise and—well, everything seemed to be quite quiet, except the steam and water downstairs was making some noise.

Q. Where was it that you met Mr. Lovegrin?

A. At the dry end.

Q. The dry end?

A. That's almost at the end of the building.

Q. And you told him to go up and shut off the main steam throttle?

A. I told him to go to the boiler room and have them shut it off.

(Testimony of Jerome L. Jancek.)

Q. And then you went on down into the basement? A. That's right.

Q. And at that time the engine was idling down there, is that right?

A. I couldn't tell immediately for fog and steam, for fog and water, steam and water.

Q. Steam and water well, as soon as the steam and water cleared up, the engine was idling then?

A. That's right.

Q. And then after that it stopped completely, when Coy shut off the steam, is that right?

A. Yes. [111]

Q. About how long was that after you had gotten down into the basement?

A. Oh, I perhaps was down there five minutes. Coy wasn't there when I got there. He had already turned around, apparently, and went to shut the steam off.

Q. Well, but you could tell the effect of his shutting the throttle stopped the machine from idling?

A. The steam cleared up very shortly after it was shut off, yes.

Q. And that was after you were down in the basement, and the commotion ceased, and the engine had gone back to an idling pace, is that right?

A. That's right.

Q. Then when the steam cleared away and you surveyed the damage down there, a lot of this line shaft and pulleys were broken, were they?

A. Yes, sir.

(Testimony of Jerome L. Janecek.)

Q. And thrown around rather promiscuously?

A. Yes.

Q. Did you observe any broken pieces of pulleys and equipment near the engine?

A. Not right at the engine. Everything was west of it.

Q. All sort of west of the engine, is that right?

A. West of the engine, where the line shaft was.

Q. And what about this main drive belt from the engine to [112] the line shaft; did it come off when the driven pulley broke?

A. It was lying on the floor.

Q. Was it near the engine?

A. It was still around the engine pulley.

Q. Maybe you could step down here and show me about where that—if we've got a picture that shows that.

A. That belt——

Mr. Kelley: Three and four shows the belt.

Q. Had this pulley broken in the left hand corner, or did the belt come off that?

A. No, that's the one on the engine. The belt stayed on that pulley, in that neighborhood. It couldn't get very far.

Q. This pulley or wheel here is on the engine?

A. Just a minute, I want to get my bearings here.

Mr. Kelley: Take your time. That's the main belt there.

A. That's the line shaft pulley, the driven pulley.

Q. Yes? A. Yes.

Q. And that had broken? A. Yes.

(Testimony of Jerome L. Janecek.)

Q. And the belt had flown back towards the engine, and was curled up under the engine, near the engine? [113]

A. Well, there isn't much room for that belt. It's a large belt, but it had come this way and was lying still in the general direction that it should be driving, but it was laying on the floor.

Mr. Kelley: Are you indicating a general north-east direction?

A. General west; I wouldn't say whether it was east or—yes—I thought you said north—I misunderstood the question. General northeast. 'This way is south.

Q. This way is south?

A. Yes. That way is west.

Q. Was it over this, looks like a little wall there, on top, on this, wasn't it?

A. It was perhaps all the way out of that wall, or anyway it had moved from here in here some place.

Q. Was it jammed up in any way in connection with the engine itself, or any moving parts of the engine?

A. I couldn't see where it was, except that on the engine there isn't very much room to spare, that is, on the pulley of the engine; it couldn't very well get out of there.

Q. What was its condition? Was it torn or broken in any respect? A. It was bruised.

Q. Was there a tear in it? [114]

A. Some small gouges, as far as I can remember. It didn't need any repairs.

(Testimony of Jerome L. Janecek.)

Q. You don't remember a strip torn in it?

A. Well, if you'd call a gash anywheres from two to six inches a strip, I'd say yes, but it wasn't tore out; it was gashed or bruised. A broken pulley or a shaft might have hit it.

Q. And where had the pieces of this pulley gone; had they flown over in the general direction of the engine?

A. There were pulley pieces all over the basement, from all the pulleys that were broke, and I couldn't tell you which was which.

Q. The basement was pretty well covered with them? A. Yes, sir.

Q. Now, you went over to the number 4 engine, you said, I think, and noticed that the belt to the governor was broken and off? A. Yes, sir.

Q. Where was it lying?

A. About as directly under it as it could fall. It didn't throw itself or fly out of position at all. It broke and fell straight down.

Q. It broke and had fallen down fairly straight underneath the machine? A. Yes, sir. [115]

Q. And I don't believe you at that time examined the machine further with any care, did you, Mr. Janecek? A. You mean the engine?

Q. The engine.

A. Well, I wanted to know why some of these safeties on it didn't work. That was the first thing I was interested in.

Q. And you examined the Brownell stop?

A. Yes, sir.

(Testimony of Jerome L. Janecek.)

Q. It had worked? A. It had.

Q. Now, did you say you examined the stop on the governor?

A. You mean the safety stops? Yes, sir.

Q. Huh? A. Yes.

Q. When did you do that?

A. At the same time.

Q. What sort of an examination did you make of that?

A. Well, I wanted to see if the pin had dropped.

Q. You mean this pin, now, that goes up to the safety pull upstairs? A. Yes, that's right.

Mr. Kelley: Are you talking now about the Pickering governor or the butterfly valve?

A. Butterfly valve, I am. [116]

Q. Yes, sir; and the pin had been pulled from the link in the butterfly valve?

A. It's the safety pin that they pulled upsairs. The handle is upstairs.

Q. The handle is upstairs; it hangs down on a chain and lifts the pin out.

Mr. Kelley: You may take the chair, Mr. Janecek.

The Court: It's time for adjournment now. We might as well suspend.

(Whereupon, the Court took a recess in this cause until October 8, 1947, at 10 o'clock a.m.)

Spokane, Washington
Wednesday, October 8, 1947
10 o'Clock A.M.

JEROME L. JANECEK

Cross-Examination

(Continued)

By Mr. Paine:

Q. You might just step down here. On Exhibit 8—just stand around on this side so that the Court can see—this pin we have reference to is this little pin here in the upper right hand corner of the exhibit number 8, attached to a chain that leads up to the top of the picture, is that right?

A. Yes.

Q. And this chain then runs on up through and comes up through the pipe on exhibit 10, the chain itself, on up through the floor and comes out here, through the pipe to a handle in exhibit 9?

A. Yes. [117]

Q. That's right; and that chain is fairly taut; it isn't looped or slacked, it just runs from here right straight up through, doesn't it?

A. There could be some slack in it.

Q. Very much?

A. No, but there might be an inch or two.

Q. Now, when you took a look at this, what condition did you find the pin in?

Mr. Kelley: Just a minute; by "this"—

Q. The pin on Exhibit 8.

A. The pin was pulled clear up to the lower leg.

(Testimony of Jerome L. Janecek.)

Q. Clear up to the lower leg?

A. There's two legs there, two loops, or two eyes.

Q. And it was pulled up to the lower of those two eyes?

A. Yes, sir.

Q. It wasn't pulled out of the eyes, then, was it?

A. No.

Q. And in order to release the butterfly valve, it has to be pulled out of the eyes, doesn't it?

A. Yes.

Q. So that the pulling of the safety handle upstairs had failed to operate to release the butterfly valve downstairs, hadn't it?

A. That's right.

The Court: I wonder if there is any question about the effect of pulling that pin out from the butterfly valve? Does that shut the steam off from the engine?

Mr. Paine: Yes——

Mr. Kelley: I wonder if the witness could answer that?

Mr. Paine: Yes, I'm not going to answer it.

The Court: What I had in mind was, if counsel could agree on it, they could tell me.

Q. (By Mr. Paine): Would you explain that, Mr. Janecek, a little more in detail, what this butterfly valve mechanism, how it operates to stop the engine?

A. It works the same as a damper in a stove pipe. A half turn, it would be crosswise in the pipe, or back, it would allow steam to flow through

(Testimony of Jerome L. Janecek.)

very freely, practically open. In other words, it would be edgewise, and across the pipe as an obstruction in another position.

Q. In other words, you have your steam pipe, which is round? A. Right.

Q. And this valve runs through so that when it is open it is merely a plane surface, and the steam comes through? A. That's right.

Q. And when the valve is closed, it swings around in some fashion such as that, and shuts off the steam, is that right? [119] A. Yes.

Q. Now, on this device we were talking about here, you might step down here again, in Exhibit 8, where the pin was, over right on the center of the picture to the right is a square or oblong looking piece of metal. What is that?

A. That's the weight.

Q. And that works as a lever on the arm into this little round piece about an inch away from it here, is that right? A. Yes, sir.

Q. And when that weight comes down, that turns the butterfly valve to a position to shut it off against the flow of the steam? A. That's right.

Q. And by the pulling of the pin, that releases the tension on it so that the weight can drop down and close the butterfly valve, is that right?

A. Yes.

Q. And with the pin in position that holds it there, the weight can't drop down and close the valve, is that right? A. Yes.

(Testimony of Jerome L. Janecek.)

Q. Now, did you look at any other devices there, or was that all you looked at to see whether they had operated or not? [120]

A. There is another stop there that should trip when the belt on the governor breaks, when one of the belts on the governor breaks, and then there's the overspeed device to stop when the machine or engine reaches a pre-determined setting.

Q. That's down on the flywheel, or something, isn't it?

A. The overspeed is on the flywheel.

Q. That works up to the same butterfly valve, doesn't it? A. Yes, sir.

Q. It comes up and joins the chain here on Exhibit 8 where the pin is located, is that right?

A. This chain.

Q. And they both attach to the same upper arm of the butterfly valve? A. That's right.

Q. Now, does that release the tension there on the butterfly valve too, or not?

A. In the same way; that is, the chain happens to go slack in the one case, and in the other case it's disconnected by pulling the pin.

Q. Now, what about your examination of any other devices there? Did you make anything other than just a casual look? Did you make an examination of this device on the governor belt?

A. Nothing more than to see if they had tripped or not. [121]

Q. You did examine them to see if they had tripped or not? A. Yes, sir.

(Testimony of Jerome L. Janecek.)

Q. You feel positive about that? A. Yes.

Q. What did you observe in that regard?

Mr. Kelley: I think this is repetition, your Honor. He testified yesterday that the Pickering governor had not——

Mr. Paine: Well, I think the Judge wants to know the details of how you determine that by looking at it, and so forth.

The Court: I'll overrule the objection.

A. As I understand it, you want to know what other examination I had made.

The Court: What you observed.

Q. What you observed in respect to the governor stop.

A. Well, the pin hadn't pulled completely out.

Q. I'm not talking about the stop on the governor.

A. Then what are you talking about?

The Court: Are you talking about the stop on the flywheel?

Q. The stop here, Mr. Janecek, the Pickering stop on the governor, which is operated and shown in Exhibit 8 by this idler pulley riding on the belt between the governor and the engine. [122]

A. Yes.

Q. Now, did you take a look at that?

A. Yes.

Q. That operates, does it not, by—when the belt is off, or off between the two pulleys, the rider pulley is counter-balanced by a weight which is shown down here in the lower left hand corner?

A. Right.

(Testimony of Jerome L. Janeeck.)

Q. And when the tension of the belt is removed, this weight falls down and the idler pulley runs up and trips the mechanism on the governor?

A. Yes.

Mr. Kelley: May the record show counsel is referring to Exhibit 8.

Q. (By Mr. Paine): And you found the belt was off? A. It was broke.

Q. Where was the belt?

A. It had gone straight down, and as I described it, laid across here. Part of it was lying or hanging near the floor.

Q. Hanging from what? Was it still attached to either of the wheels?

A. It was off here, and part of it was either off that pulley or laying down here, and draped across here.

Q. Part of it was lying on the driving pulley, and the rest [123] laying on the floor?

A. Far as I know it could have been on the pulley or on this side of the pulley or down here. I won't testify to that. I don't recall exactly.

Q. But the weight had fallen and the idler pulley had moved up? A. Yes.

Q. And had that tripped the mechanism in there? A. No.

Q. That is set on a pin, or a bar, so that when the bar moves, the pin moves, doesn't it?

A. Well, there's a bar, yes, but it releases a ratchet.

(Testimony of Jerome L. Janecek.)

Q. Higher up in the governor?

A. Yes, but it doesn't show there.

Q. When the bar moves the pin moves and releases the ratchet? A. That's right.

Q. And what was it you examined there and found hadn't happened?

A. That the ratchet was still wound up.

The Court: I didn't get that last answer.

Q. The ratchet was still wound up. Now, on the day that Mr. Olinger—You know Mr. Olinger, don't you? A. Yes.

Q. He came out there, I believe it was about 2:30 on July 5, is that right? [124]

A. That's about right.

Q. In the afternoon of the 5th. This accident was the day before the 4th of July, and he got there the day after; did you and Mr. Olinger go to this device on the governor?

Mr. Kelley: I think the accident was July 3.

Q. Yes, I said July 3. The 4th was the next day, and then Mr. Olinger arrived on the 5th. That's correct, isn't it?

A. I'd say that he was there about two days later, yes.

Q. And did you and Mr. Olinger go to the device on the governor, this Pickering stop device, and test it out four or five times? A. Yes.

Q. What happened? A. It worked.

Q. It worked every time that you tested it?

A. Every time we tested it.

(Testimony of Jerome L. Janecek.)

Q. And you did that by holding this rider pulley back up in the position in which it would be held by the belt? A. Yes.

Q. And then releasing your hand from it, in the same manner as it would be released if the belt broke or was taken off? A. Yes. [125]

Q. And the weight pulled the idler pulley down and operated the device? A. Yes, sir.

Q. How many times did you try that, would you say?

A. Oh, at least three, and possibly four or five.

Q. And every time it operated? A. Yes.

Q. All right. Now, when did you first tell anybody about the fact that when you got down there the first time, right after the accident, that you found that the governor device had not operated?

A. I don't remember ever telling that to anybody.

Q. You never told it to anybody until you've told it in Court here yesterday or today?

A. Well, I don't remember telling it to anybody.

Q. Is that your best recollection, that you never told that to anybody?

A. Yes, I'd say it is. I don't remember who I told it to, if I have told it to anybody.

Q. Did you tell it to Mr. Kelley before you came in here to testify? A. I might have.

Q. Well, can't you be a little more positive than that, Mr. Janecek?

Mr. Kelley: Well, now, if your Honor pleases, this [126] has gone far enough. It was elicited on cross-examination.

(Testimony of Jerome L. Janecek.)

Mr. Paine: No, I think not, your Honor. On direct examination he went over and testified he examined it and it hadn't worked.

The Court: Overruled.

Mr. Kelley: In any event, it is immaterial. I presume he would tell a lawyer representing the plaintiff.

The Court: Overruled.

A. We've talked about this accident so many times that without a doubt that's come up many times, but as far as me saying who I first told it to, I don't know. I might have talked it over with my master mechanic, or with the insurance man, or any number of people, but I can't tell you who I first told it to.

Q. All right, I'm not too particular on who the first one was. I'd like to know positively if you told it to anybody.

A. No doubt I have, but I can't tell you who I told it to first.

Q. All right, can you tell us who you told it to at all?

A. Well, I imagine anyone that started to talk about the accident, trying to find out what had caused it, why, the same question would probably come up first.

Q. Yes, that's exactly what I supposed, Mr. Janecek, and on [127] the 7th of July the Hartford men came out there, and there was another discussion as to what had shut off this engine——

(Testimony of Jerome L. Janecek.)

Mr. Kelley: Is this for another occasion, Mr. Paine?

Mr. Paine: Yes, it is.

Mr. Kelley: July 7, still another occasion?

Q. That's right, and at that time, some extensive tests were made on the butterfly valve to see whether it had shut the engine off, weren't they?

Mr. Kelley: I wonder if counsel would fix the occasion, who was present, and what was purported to have been done?

Q. I think Mr. Janecek remembers, July 7th, with Mr. Fullmer, Mr. Olinger, and Mr. Murray of the Hartford people present, and you were present, and the butterfly valve was tested out to see if it would operate. Do you remember that?

A. I remember all these men being there, yes. I don't remember the date.

Q. Well, it was shortly after the accident?

A. That's true.

Q. And an endeavor to find out what had stopped the machine, brought it to an idling speed?

A. That's true. [128]

Q. And did you tell anybody at that time that the governor stop had not operated?

A. That the Pickering governor stop had not operated?

Q. Had not operated.

A. Not that I recall.

Q. Not that you recall?

A. No, that's right, not that I recall, if I understand your question right.

(Testimony of Jerome L. Janecek.)

Q. That's right; and you knew that that would be an important matter to determine whether the governor stop might have stopped this machine or not? A. I should say yes.

Q. Did you ever tell Mr. Black that you found the governor stop hadn't tripped, when you first went there?

A. I don't recall whether I have or not.

Q. You don't recall that you have ever told him?

A. Well, I think it puts me in the same place that we were a while ago. There's so many people, everybody that talked about the accident would naturally bring up the same subject. Now, what I told him, I don't know.

Q. Well, you knew, didn't you, that he was endeavoring to find the first person who saw that governor stop after the accident, and was contacting Mr. Coy and Mr. Wheeler with an endeavor to find somebody who had seen that condition of the governor stop for a couple of minutes [129] after the accident?

A. You mean Mr. Myron Black?

Q. Yes.

A. Well, I was just as much interested as Mr. Black was. I don't know why he should particularly ask me. I might have been asking someone else the same thing, although I was one of the first persons there.

Q. Were you asking other people what the condition of that governor stop was? That's a fact, isn't it?

(Testimony of Jerome L. Janecek.)

Mr. Kelley: Well, of course, this is improper cross-examination, wasn't brought out on direct, would be hearsay, anyway, and further, it is immaterial.

The Court: Overruled.

Q. You were asking other people, trying to find out who was the first person that saw this governor stop after the accident, weren't you?

A. Oh, no. I was about the first person, me and Mr. Coy, that saw it. I wouldn't be asking Mr. Coy or anybody else who was the first person that saw it. I don't see how I can answer that question.

Q. Well, you can answer it by telling me whether you did or did not inquire from other people if they had seen this governor stop immediately after the accident, and what its condition was.

A. I don't know how to answer that question.

Q. You don't know whether you talked to other people trying to find out if they had seen it after the accident, or not?

A. Well, I still don't know how to answer the question. I could ask people about what their opinion was of it, and had they seen it, but as far as saying that I asked other people if they had seen the governor before I did, or something like that, I can't say that I can answer that, no, because I think I was the first one that saw it, me and Mr. Coy.

Q. Now, did you conduct this examination with Mr. Coy?

A. No—you mean examination of the engine?

Q. Yes.

(Testimony of Jerome L. Janecek.)

A. Yes, we were both there together. Whether he was paying attention to what I was doing I don't know, but he was there.

Q. Did you call it to his attention?

A. No doubt I have.

Q. Well, do you have any recollection of having called it to his attention and he came over and looked at it?

A. The only thing I can say is if two people were together looking over a piece of equipment like that, they might discuss it, yes.

Q. You heard Mr. Coy yesterday testify he hadn't examined it, and didn't know whether it had tripped or hadn't tripped? [131]

A. He probably wouldn't have examined it, but he was there. I didn't say he helped me examine it, but he was there.

Q. Do you recollect whether you talked to him, and the two of you looked at it and made some comment? It was rather unusual that the thing wouldn't have acted, wasn't it?

A. I should think I might have made some comment on it, yes.

Q. But he testified to no such comments?

A. Well, I don't know.

Q. Now, I ask you if you remember an occurrence on the 4th of August, 1946, in the office of the paper mill, where you and Mr. Black have your offices, you were there, and Mr. Black was there, and Mr. Murray was there, Mr. Fullmer was there, of the Hartford, Mr. Olinger was there, and Mr. Mc-

(Testimony of Jerome L. Janecek.)

Keon was there; these gentlemen back here; you know all of them, don't you? A. Yes.

Q. And you were discussing the situation, and what had happened, and I'll ask you if you did not in the presence of those gentlemen at that conference say that you didn't take any particular notice of the governor stop until Mr. Olinger arrived on the 5th, and you tested it out; that you didn't know whether it had operated or hadn't operated?

A. I know that it hadn't operated, but I hadn't done anything with it. [132]

Q. I'm asking——

Mr. Kelley: Go ahead and explain. If your Honor please, I think he's entitled——

Mr. Paine: I think he should first answer whether he made that statement or not.

The Court: I think he should first answer the question.

(Whereupon, the reporter read the last previous question.)

A. I don't remember saying that I hadn't taken particular notice of it, no.

Q. Would you say you did say it, or didn't say it?

A. I don't know whether I said it. I don't remember saying it.

Q. You don't remember saying it?

A. That's right.

Q. Do you remember telling that group that you had observed it and that it hadn't operated?

A. I certainly have observed it, and I would say that to them, no doubt.

(Testimony of Jerome L. Janecek.)

Q. I'm asking you if you remember making any such statement to them?

A. No, I don't, but I still say that I had examined it, and two of them hadn't worked, and one of them did; two of the safeties on there. [133]

Q. Well, the one we're talking about is the governor stop.

A. That's right; well, now, you mean the Pickering governor?

Q. Yes.

A. That's right. That one hadn't worked.

Q. And you don't remember telling that group that that had not worked?

A. No, I don't, but I believe that I might have said that, because I have said it today, and I know it to be a fact.

Q. All right, you believe that because you've said it today you might have said it then, is that right?

Mr. Kelley: I object to that form of the question, arguing with the witness.

Q. All right, we'll go on with it, Mr. Janecek. After you discussed what you had observed there do you remember that Mr. Black sent for Mr. Beguelin, the machinist who had made the stop, and who arrived at the scene of the accident about 7:30 in the evening of the 3rd, to find out what he had discovered of the condition of the governor stop; do you remember that?

A. Yes, I do.

Q. And Mr. Beguelin came to this same conference in which all these gentlemen were present, and

(Testimony of Jerome L. Janecek.)

in which you were present, and told you that when he got there at 7:30 he found the governor stop had tripped and operated, is that right? [134]

Mr. Kelley: To begin with, that's objectionable on the grounds of hearsay, and it's also not competent and material, due to the hiatus of the time; the evidence shows the accident occurred at quarter to two; now he's eliciting information as to what occurred during a sweat session with some insurance representatives a month later.

The Court: Overruled.

A. Well, I don't think Beguelin came there at 7 o'clock at night. I think he was there about 4:30, and by the time Beguelin came there two or three hours had elapsed since the accident. Now, meanwhile——

The Court: I doubt if the witness understands the question. The question was about something said in conference.

Q. I'm questioning you, Mr. Janecek, about the fact that at this conference after the discussion had taken place as to whether or not the Pickering governor stop had operated, they sent for Mr. Beguelin to find out what he knew about it, and that he came in——

Mr. Kelley: Just a minute.

Q. Just let me finish this question, Mr. Kelley; he came into this conference and in your presence stated that when he got to the scene of the accident, whether it was at 4:30 or 7:30, in the afternoon of

(Testimony of Jerome L. Janecek.)

the accident, he [135] found that the Pickering governor stop had operated. Do you remember that?

Mr. Kelley: Now, just a moment, please, while I make my objection. Your Honor pleases, I respectfully ask the Court to have counsel direct the witness's attention to a specific conference, a specific date, when he says "he," whom he means.

The Court: I thought he was talking about this conference in the office on the 4th of August.

Mr. Paine: Yes. I don't think there's any confusion between the witness and myself.

The Court: Did you specify the time?

Mr. Paine: Yes, August 4, 1946, I believe some time in the afternoon.

A. You want me to answer as to what Beguelin testified regarding the Pickering governor? I don't know what Beguelin testified.

The Court: Just a moment; this "testified"—

Q. Not testified; I'm asking if he didn't come into this conference and make the statement in your presence that the Pickering governor when he first saw it in the afternoon of the accident had operated?

Mr. Kelley: Your Honor pleases, if he seeks to impeach Beguelin, he can do that at the proper time, but that's not a proper question addressed to this witness. [136] It doesn't test his recollection as to what happened at the time of the accident. He's talking about a meeting purported to have been held a whole month after the accident.

(Testimony of Jerome L. Janecek.)

Mr. Paine: Well, the purpose of it, your Honor, this man says now he discovered this Pickering stop had operated.

Mr. Kelley: He said it had not operated.

The Court: Talk one at a time.

Mr. Paine: Had not operated. That was a matter of primary discussion between the company and the insurance people during the investigation of this accident, that he was present when that matter was being fully discussed, and gone into, in the office, with Mr. Black and the insurance people, that if he had seen this in the condition in which he now says he saw it, he would have promptly stated that fact, and it would have been unnecessary to hunt for Mr. Beguelin to find out what his observation was.

The Court: I think it is proper cross-examination. I'll overrule the objection.

A. Well, the question was whether I heard Mr. Beguelin make that statement? I wouldn't remember that. That's a long time ago.

Q. Well, it's last August. [137]

A. It's a year ago last August.

Q. A year ago last August. A. Yes.

Q. Do you remember anything that was said in that conference?

A. Well, I should remember some of the things, but when it comes to saying that someone said so and so, exactly, I can't do that.

Q. Well, do you remember Mr. Beguelin coming there, even?

(Testimony of Jerome L. Janecek.)

A. I think I do, but I'm not so sure. I think Mr. Beguelin was there. I know all these other gentlemen were there.

Q. And you don't remember telling them that the governor stop had failed to operate?

A. I can't tell you that.

Q. You don't remember whether you said that you hadn't paid any particular attention to it until you and Mr. Olinger examined it?

A. I hadn't taken it apart or tried to make it work.

The Court: You're getting off the track again. The questions are whether you said or didn't say something, not what you did or didn't do.

Q. Didn't you say you hadn't particularly paid any attention to it until you and Mr. Olinger went over and examined it?

A. My first interest in a case like that would be to see what made the thing fail, and that's all. As far as [138] taking it apart is concerned, I didn't. I didn't want to touch it, but I can see whether it had tripped or not.

Q. Well, your second interest would be to convey that information to Mr. Black and the insurance people, wouldn't it, if that were so, if you had examined it?

A. Perhaps, if they had asked.

Q. Wasn't the whole subject of this conversation and conference primarily dealing with whether this stop had or had not operated?

A. I should think so, yes.

(Testimony of Jerome L. Janecek.)

Q. And you have no recollection of coming forward and making a positive statement "Well, there isn't any question about it, I saw it right after the accident?"

A. That I saw it right after the accident?

Q. Yes. A. Yes, that's right.

Q. I say, you didn't come forward and make that positive statement, or turn in any report to Mr. Black, or anything of that sort?

Mr. Kelley: I thought he testified several times he doesn't remember whether he said it or not.

The Court: Overrule the objection.

Q. That's what I'm asking, if he remembers ever doing anything of that sort?

A. No, I don't. [139]

Q. When did it first come up in discussion in connection with this trial, as to whether you had seen it or not?

A. I think it came up every time when the Hartford men came over there. The same question had been mulled over many times. Anybody discussed it.

Q. Do you recollect at any time that you ever told the Hartford men that you had seen it operate, seen that it had not operated?

A. No, I don't.

Q. Now, when you got in there into the room near the engine, I believe you testified, this may be repetition, that the room was partially filled with water and vapor, and that the engine was idling?

A. Idling, yes.

(Testimony of Jerome L. Janecek.)

Q. And that later when the steam was shut off the engine stopped? A. That's right.

Q. About how much after was it when that occurred? Maybe a minute or two, three or four?

A. There was no belt or anything on it; it was coasting.

Q. Yes, but I mean from the time that you saw it idling until the steam was shut off and the engine completely stopped?

A. I say, there was no load on it, whatsoever, no belt or anything, and it idled quite awhile. I wouldn't know [140] how long.

Q. Well, it was a minute, or a couple of minutes, or more, before the steam was shut off?

A. I'd say more than two minutes, yes.

Q. Now, about how much time was there between the breaking of the wire pulley and the later noises that you heard in the basement?

A. About one second.

Q. About one second?

A. Just enough time that you could distinguish between the two.

Q. Then the other noises in the basement started?

A. First the pulley that I could see upstairs, and the other one instantly afterwards.

Q. And how long did those noises downstairs then continue? A. Just one explosion.

Q. One big explosion?

A. Well, it was more of a thump. It didn't sound like an explosion; just the same as the pulley upstairs, when it burst there was just two thuds.

(Testimony of Jerome L. Janacek.)

Q. Now, around this number 4 machine, after everything was over, were there considerable broken pieces of pulley and line shafting scattered around?

A. Mostly downstairs, yes.

Q. Yes, downstairs, around the Sumner engine, not the paper [141] machine.

A. There was some upstairs, but mostly down stairs.

Q. Mostly downstairs around the neighborhood of this engine, there were broken pieces of pulley and the main line belt was off and the governor belt was off, and evidence that considerable commotion had taken place there, is that right?

A. West of the engine.

Q. The west part, west of the engine?

A. Yes, where the line shaft is.

Q. Where were these broken pipe fittings to the engine? Were there some smashed or broken pipe fittings?

A. Well, some of that piping runs north of the engine, and above the engine. There's piping all around, for that matter. Just which piping were broke, now, I couldn't tell you that. There was water pipe, fire lines, broken all over the place.

Q. Well, they were broken by the flying portions of the line shaft or pulleys, weren't they?

A. Yes.

Q. So that a number of those things had hit various fittings on this engine?

A. That's right—well, I'll change that; I don't know of anything hitting the engine.

(Testimony of Jerome L. Janecek.)

Q. Well, these pipe fittings? [142]

A. The pulleys hit columns and pipe and broke the pipe. I don't know of anything that hit the engine.

Q. Now, I think—maybe you're not familiar with the complaint. It alleges that portions of the Sumner steam engine which were broken in this occurrence was a broken lubricator, broken lubricator lines, several broken guards, and damage to the steam lines.

A. Well, the steam lines are not necessarily right at the engine. They could be any distance away from it. As far as the lubricator and the guards are concerned, I don't recall that.

Q. You didn't prepare for them a list of the items that were damaged?

A. I didn't make up the list.

Q. What are those lubricator lines?

A. Do you want me to show you on the picture?

Q. Yes. A. The lubricator lines?

Q. Yes.

A. There's the lubricator. Whether it was broken I don't recall. If I remember right, I thought there was some broke on there, and I'm pretty sure it was on number 3 machine, which is another engine, and I do believe that.

Q. I think this is alleged to be on the Sumner steam engine. You have only one Sumner, don't you? [143] A. One Sumner, yes.

(Testimony of Jerome L. Janacek.)

Q. And the lubricating lines, and this is the lubricator up in the left center of the picture, of exhibit number 2, is that right?

A. That's the lubricator, yes.

Q. And this is the governor right above it, is that right?

A. That's right.

Q. And this is the governor belt right beside it?

A. Yes.

Q. This is the idler pulley right next to it?

A. Yes.

Q. And that indicated that some objects had hit and dented or damaged the lubricator, and the lubricator lines in that neighborhood, didn't it?

A. I don't remember that, but I do think there was a lubricator broke, and I think it was broke on number 3, caused by the accident. There was an accident, there was some damage on number 3 engine.

Q. Where is number 3 engine?

Mr. Kelley: We're not claiming any damage on number 3.

Mr. Paine: Well, maybe counsel will stipulate that the damage to the lubricator is on number 4 engine?

Mr. Kelley: No, we'll stand on our pleadings.

Mr. Paine: Well, your pleadings allege that there [144] was damage to number 4 engine, don't they, Mr. Kelley?

Mr. Kelley: I understand.

Mr. Paine: And you'll stand on your pleadings?

(Testimony of Jerome L. Janecek.)

Q. (By Mr. Paine): Now, this butterfly valve you say is operated from a mechanism on the fly-wheel? A. Yes.

Q. And what you observed, that shows here on the exhibit number 11, down in the center, that that had tripped out down there by the centrifugal force, is that right? A. Yes.

Q. And that has to be relayed through a wire up to the handle on number 8, the chain of some sort? A. The chain.

Q. Is that right? A. That's right.

Q. And what you observed was that this mechanism down here on the wheel was in a tripped position? A. That's right.

Q. Whether the slack had released this weight which was still held up here by the pin you don't know, do you?

A. Give me that question again.

Q. I say, whether any slack there had released enough to release this weight on the butterfly valve, which is also connected up in the safety pin device——

A. There is slack enough, chain enough, to shut the butterfly [145] valve, yes.

Q. Enough to shut the butterfly valve?

A. Yes.

Q. How could you tell that?

A. Because the engine was idling.

Q. You concluded that from the fact that the engine was idling, isn't that right? A. Yes.

(Testimony of Jerome L. Janecek.)

Q. What speed is that automatic device set at on the flywheel, to operate?

A. The automatic trip?

Q. Yes.

A. I'd say about 710 feet, on the paper machine. That's where we try to keep it.

Q. Well, how many revolutions a minute on the flywheel, about 250? A. About 275.

Q. About 275, so that if it operated it would shut the machine off when the flywheel goes about 275? A. Very close.

Q. If it didn't operate, or the flywheel had attained speeds in excess of that, it would indicate that it hadn't operated, wouldn't it?

A. I didn't quite get that.

Q. If the wheel went on up, for instance, to destruction, [146] it would be conclusive proof that it hadn't operated, wouldn't it?

A. That's right.

Q. If the wheel went up to a speed of 800 R.P.M. a minute, it would be an indication that the device, while it might have tripped out at the wheel, hadn't operated the butterfly valve at 250 revolutions, wouldn't it? A. I would think so, yes.

The Court: Any further questions on cross-examination?

Mr. Paine: No, I think that's all.

Redirect Examination

By Mr. Kelley:

Q. Mr. Janecek, I believe you stated in response to counsel's questioning that two of the stops had

(Testimony of Jerome L. Janecek.)

not worked, and one stop apparently was tripped, is that correct? A. Yes.

Q. Now, by the two stops which had not worked, you mean first the pin in the safety chain——

A. Yes.

Q. ——to the butterfly valve, as shown in exhibit 8? A. Yes.

Q. That had not worked. Now, by the second stop that had not worked, you are referring to the automatic arrangement on the belt of the pickering governor, which is supposed to work if the belt of the Pickering governor [147] breaks, is that correct? A. Yes.

Q. Now, with respect to the third stop you mentioned, you're referring to the fact that this Brownell overspeed stop on the flywheel of the engine had apparently been tripped in some manner?

A. Yes.

Q. You do not want the Court to understand that it had been tripped in the usual manner by the safety chain?

A. That's right, it wasn't tripped by the safety chain.

Q. Nor do you want the Court to understand that this third safety——

The Court: I don't believe it's necessary to have him say what he wants me to understand. I think it is clear. There's no doubt in my mind, and I don't think there can be any doubt in the record what he meant as to the two devices not working and one of them working.

(Testimony of Jerome L. Janecek.)

Mr. Kelley: I had in mind, your Honor, a question on cross-examination, a question that was perfectly framed to the effect that the stop was thrown out by centrifugal force, and this is preliminary to show that the trigger could have been operated by many things besides the way it was supposed to be operated.

The Court: Oh, I didn't get that. You can go into [148] that if you wish.

Mr. Kelley: It's preliminary.

The Court: I didn't know there were other ways of tripping it besides the centrifugal force of the flywheel.

Q. Now, counsel asked you a moment ago, Mr. Janecek, concerning the main line belt, and you stated that that was off, or at least you had observed it was slack? A. Yes.

Q. Now, just tell the court what main line belt you're referring to. Point it out on the exhibit.

A. It's this belt here.

Q. Yes; you're indicating on exhibit 4. Now, what kind of a belt is that?

A. That's a nine ply, 22-inch rubber belt. It's about 47 feet long.

Q. State whether or not—what was its characteristics as to whether or not it was stiff?

A. It is a very stiff belt. Nine ply is an unusually thick belt.

Q. And state whether or not it was slack when you observed it after the accident?

A. Oh, yes, it had moved about—no less than eight feet from its westward position. It moved eight foot in. That would make it very slack. [149]

(Testimony of Jerome L. Janecek.)

Q. And how far is that main line belt from the trigger of the third stop as shown in exhibit number 11, concerning which you were questioned?

A. It would be about one-quarter of an inch.

Q. When the belt is slack could it move sideways?

A. It could.

Q. If the belt went toward the flywheel of the Sumner steam engine, what direction would it go?

A. North.

Q. And if it went north when it was slack and the wheel were turning, what would happen?

A. It would bounce.

Q. Which way would it bounce?

A. Naturally, away from the flywheel, from where it bumped against.

Q. And could the belt have hit this trigger shown in exhibit 11, when it was slack and moving sideways?

A. It certainly could.

Q. Now, Mr. Janecek, going back to the time that you came down in the basement there, right after the accident, did you touch the Pickering governor at that time?

A. No.

Q. You looked it over, as you testified?

A. That's right.

Q. Does this exhibit 11 accurately portray the fact that the [150] trigger of that third stop is practically flush with the base of the pulley of the flywheel of the Sumner steam engine?

A. You mean the part stationary there?

Q. Yes.

A. It looks very near right, yes.

(Testimony of Jerome L. Janecek.)

Q. Now, you've discussed a number of times with Mr. Fullmer and Mr. Olinger of the defendant Hartford Insurance Company as to the Pickering governor not functioning?

A. You say have I discussed it?

Q. Have you, yes?

A. It's a subject that's always been brought up, yes.

Q. You don't recall all of the times and the occasions, or who was present?

A. That's right.

Q. Do you know what the holding and opinion of Mr. Fullmer and Mr. Olinger was as to the breaking of the Pickering governor, before the representatives came out here from Hartford, Connecticut?

Mr. Paine: I object to that, if your Honor please. I think it is wholly immaterial what the local inspectors' opinions might have been at the preliminary stage of this.

Mr. Kelley: It's about as material as that cross-examination.

The Court: Sustain the objection. [151]

Mr. Kelley: I had in mind, your Honor, some development of that.

The Court: You can go into other conversations at those meetings, but your asking now what their opinion was. What they said at that meeting might be material.

Q. Do you know what either Mr. Olinger or Mr. Fullmer has said concerning the Pickering governor?

(Testimony of Jerome L. Janecek.)

Mr. Paine: I object to that, your Honor. I think it would be perfectly proper for him to go into anything that was said by Mr. Fullmer or Mr. Olinger as to conditions that they observed in connection with this accident. I think mere discussions of what their conclusions might be, based upon Mr. Janecek's testimony or Mr. Coy's testimony, is immaterial. All I was getting from Mr. Janecek was his statements of fact as to his own personal observations and what he had told in regard to them. If he has anything definite, a statement that he wants to show Mr. Fullmer said on a certain day he saw this or that, I would have no objection to it, but mere hypothetical discussions back and forth, it seems to me is immaterial, and would lead to endless arguments. There have been all sorts of arguments and theories. That's wholly immaterial.

The Court: I don't think that is proper redirect. As I recall, the cross-examination was whether Mr. [152] Janecek had or hadn't made certain statements in regard to this machine, and there's nothing that could have been said in reply, because he doesn't remember saying anything. Sustain the objection.

Q. Do you recall Mr. Fullmer telling you the cause of the accident was the breaking of the Pickering governor?

Mr. Paine: I object to that. Mr. Fullmer was not present, and some statement of fact as to what he might have concluded at some stage in the investigation is wholly immaterial and irrelevant.

(Testimony of Jerome L. Janacek.)

The Court: Sustain the objection.

Q. Do you recall Mr. Olinger telling you the cause of the accident was the breaking of the Pickering governor?

Mr. Paine: Same objection.

The Court: Sustained.

Q. Do you recall Mr. Fullmer and Mr. Olinger at a meeting on or about August 4, 1946, telling you that the cause of the accident, in their opinion, after their investigation, was the breaking of the Pickering belt?

Mr. Paine: Same objection.

The Court: I ruled on that.

Mr. Kelley: Well, I was laying this because I'm going to make a formal offer.

The Court: Well, make your offer.

Mr. Kelley: I offer to prove by this [153] witness that on or about August 4, 1946, or at least some weeks after the accident on July 3, 1946, Fullmer and Olinger, representatives of the defendant Hartford Insurance Company, told this witness that in their opinion the cause of the accident was the breaking of the Pickering governor and it failed to function.

The Court: I would like to ask this: Is it your theory that that is binding on the insurance company, or is competent evidence of the manner in which the accident occurred?

Mr. Kelley: I think both, if your Honor please.

The Court: You're objecting?

Mr. Paine: I object to the offer.

(Testimony of Jerome L. Janecek.)

The Court: The objection will be sustained to the offer.

Q. I believe you stated in response to counsel's questioning that broken pipe fittings were all around this Sumner steam engine after the accident?

A. All over the basement, yes.

Mr. Kelley: That's all.

Recross-Examination

By Mr. Paine:

Q. Just one or two questions, your Honor. I didn't quite get what you testified to in regard to this belt that's down on the main engine wheel, where the automatic safety device is located. As I understood you, you said that in [154] your opinion, after the engine had speeded up to the point where the belt broke or came off the pulley, that in coming off the pulley, the belt might dislodge or hit this safety device, is that right?

A. That's right.

Q. And as far as your observation of it was concerned, this device might have been knocked off or knocked open by that hitting of the belt at the conclusion of the sequence of events?

A. That's right.

Q. It might not have operated at all merely by centrifugal force, but was knocked off at that time?

A. Could be.

Q. And at that time it might still then not operate the chain to the butterfly valve, is that right?

(Testimony of Jerome L. Janeczek.)

A. Well, if it tripped it, the chain to the butterfly valve should be slack enough to operate the butterfly valve.

Q. Should be, but with all the commotion and excitement that existed, nobody knows what the condition was?

A. That's the reason we carry a weight on there, so it does, as soon as that chain is released.

Q. As soon as the chain is released you carry a weight on it?

A. As soon as that trigger is tripped the chain has to be released.

Q. And that may have occurred when at the conclusion of the [155] accident the belt came off, at the time this may have tripped?

A. When this line shaft broke and the belt came this way eight feet, it could have danced all around that,

Q. It could have danced sideways against the pulley; it could not only have hit this down inside the flywheel, it could have flopped up and hit the engine; it might have damaged the lubricator?

A. No, there's a limited space for that belt to run. All this frame-work won't allow it to go back there.

Q. Well, up here it's in the open?

A. Yes, but it can't get out of here very well. Here's the floor, here's the frame, the belt is too stiff to go down in that opening.

(Testimony of Jerome L. Janecek.)

Mr. Kelley: May the record show the witness is indicating the opening on the east end of the main line belt attached to the Sumner steam engine, as shown in Exhibit 11.

The Court: Yes.

Q. By the time this belt came off practically all of the damage had been done, hadn't it? It was about the last thing to see the effect of the explosion?

A. As long as there was no one down there it's pretty hard to tell which part of the line shaft broke first.

Q. Well, don't you know it was the pulley on the far end [156] that exploded first?

A. Upstairs.

Q. And dis-engaged the line shaft, and then started the line shaft gyrating?

A. That's only a guess.

Q. That's your assumption, isn't it?

A. Could be, yes.

Q. And that gyration followed back to the line drive wheel of the engine? A. Could be.

Q. And by that time the machine was slowing down, wasn't it, coming to a stop?

A. It took me probably three or four minutes before I got down there. By the time we had the steam cleared away a little bit, why, I don't know whether it was idling immediately when I got there or not. I'd say the first time I saw the engine it was idling.

(Testimony of Jerome L. Janecek.)

Q. The first time you saw it it was idling.

The Court: Any further questions?

Mr. Paine: No, your Honor.

Redirect Examination

By Mr. Kelley:

Q. While you're here, you referred a moment ago to this wire pulley. Is that the one shown in Exhibit 7? A. Yes.

Q. And is that upstairs? [157]

A. That's upstairs.

Q. Not located on the main shaft as shown in exhibits 3 and 4? A. No.

Q. However, that pulley receives its motive power from the Sumner steam engine shown in exhibit 8? A. That's right.

Q. There's no other source from which that pulley can be made to go fast?

A. Yes, there is not.

(Whereupon, there being no further questions, the witness was excused.)

JUSTIN H. WHEELER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is Justin H. Wheeler?

A. That's correct. Just a minute. Your Honor, I have to request that the questioners speak a little loud, because I'm a trifle hard of hearing, and I have a bad cold which aggravates it.

(Testimony of Justin H. Wheeler.)

The Court: If you don't hear, just say so, and we'll have them repeat the question in a louder tone.

Q. You're engineer and operator for the Inland Empire Paper Company? A. I am.

Q. How long have you been with that company?

A. Well, a trifle over thirty years.

Q. And directing your attention to July 3, 1946 when the accident we're discussing happened, what shift were you on?

A. I was on the afternoon shift, 3 to 11.

Q. 3 p.m. until 11 at night?

A. That's correct.

Q. Do you recall when you came to the mill that day, with respect to the happening of the accident?

A. I do.

Q. Was it before or after the accident?

A. Well, it was after the accident.

Q. And when you came to the mill, July 3, 1946, did you go to the basement where the Sumner steam engine is located?

A. I did. I went past the engine in question.

Q. And did you observe that engine?

A. I did.

Q. Did you observe the Pickering governor on that engine? A. I did.

Q. Was that Pickering governor tripped?

A. It absolutely was not.

Q. Did you have charge, yourself, of the Sumner engine? Was the Sumner steam engine part of your duties, to service? A. It was, yes.

(Testimony of Justin H. Wheeler.)

Q. Can you tell the Court why the Pickering governor had not tripped? [159] A. I can.

Q. Did you observe where the belt of the Pickering governor, to which I am directing your attention on Exhibit 8, do you know where that belt was?

A. It was off, it was gone, lying on the floor.

Q. Did you look at the idler arrangement on the Pickering governor? A. I did.

Q. Did you observe the screws which were holding the arm on to the shaft of the Pickering governor? A. I did eventually, yes.

Q. And what was their character?

A. Well, the apparent reason was that that set screw, there was an old key in that little shaft that operates the trigger that kicks out the dog on the ratchet, which releases the governor and closes it, and that set screw had evidently worked loose enough so that this arm that comes down and engages with the rod that was fastened to the tighter pulley moved the rod, the rod was loose on the trigger shaft, so that it did not touch the dog on the ratchet enough to throw it out.

Q. That was the reason why the Pickering governor didn't shut off automatically after the belt broke?

A. That's absolutely the reason. I might add, if permissible, that we have to change those belts when we change speeds [160] on the engine, change not only from the belt but from one pulley to another, sort of a cone pulley operates, when we go on slow speed we have to stop and change from

(Testimony of Justin H. Wheeler.)

one set of pulleys and belts to the other, and the day before, in the afternoon, sometime during the evening shift, I had reason to change those. We changed the speed, and when you change you have to hold that tightener pulley up off so to get your belt slack, and it was a rather difficult matter to do, to hold it with one hand and change the belt with one hand, and occasionally that tightener pulley will get away from you and drop, and that kicks out, of course, and the day before I had that same experience; I was in a hurry and I accidentally dropped the tightener pulley, and it kicked out, and I had to set it, and I was curious to know the reason it didn't kick out at the time of the wreck. I noticed it was not kicked out. The butterfly in the steam pipe was out, but not that.

Mr. Kelley: You may inquire.

Cross-Examination

By Mr. Paine:

Q. Mr. Wheeler, what time was it you said you got there? A. Beg pardon?

Q. What time was it you said you got there?

A. Well, somewhere between 2:15 and 2:30. I couldn't say exactly. That's the usual time that I go in. [161]

Q. 2:15 or 2:30?

A. Yes, somewhere in that vicinity. Not earlier than 2:15, and I doubt if it was much after 2:30, because we're supposed to take over at 3 o'clock or earlier, and of course we have clothes to change and so on.

(Testimony of Justin H. Wheeler.)

Q. At that time you say the belt was on the floor? A. Yes.

Q. Was it hanging on any of the pulleys?

A. No, it lay virtually in the alleyway.

Q. Did you examine the belt?

A. Well, enough to see it was broken.

Q. What sort of a break was it?

A. Well, it wasn't exactly square across, I don't think. I don't recall exactly. It was broken; I'm sure it was broken.

Q. You're sure it was broken?

A. Yes, that part I'm sure of.

Q. I'll show you defendant's identification 12. Does that look like the belt? Does it have a fastener of that sort?

A. Yes, that's the type of fastener we use on those belts, but as far as that being the identical belt, I wouldn't say. There might be a hundred of them around in the condition that is, old belts; as I say, I wouldn't positively identify it. [162]

The Court: That's all right.

Q. I don't ask you to, but you say that is similar to it? A. Similar to it.

Q. You say you had around the shop hundreds of these old belts of the same description?

A. Yes; three or four hanging on the hook right there.

Q. You have to change those belts quite frequently?

A. Yes, every time we change from high speed to low we have to make that change.

(Testimony of Justin H. Wheeler.)

Q. Do you change this belt from the main engine to the pulley drive, or just on the cones?

A. Just on the cones.

Q. But this belt, when it breaks or gets old you change it? A. When we figure they're unsafe.

Q. Sometimes you don't know that until they break, and then you put it on?

A. That's very true.

Q. I mean this belt breaks there frequently, and you go over and grab another one off the wall and put it on? A. We always keep spares.

Q. And when the belt breaks the automatic device stops the engine, you put the belt on, and away she goes? A. Yes.

Q. That's a common occurrence?

A. That's what should be. [163]

Q. And I say, that's a common occurrence?

A. Yes.

Q. And the day before this, you did some changing of the cone belts to change the speed of the engine? A. Yes.

Q. What were you doing, speeding up or slowing down?

A. I don't recall now which it was, because we make so many changes, and it was a thing that I didn't carry in my mind. I couldn't say whether I was changing from high to low or the other way, but I did drop the arm of the counter-balance on that tightener pulley, and it kicked out, but I positively could not say which I was doing, from high to low or reverse.

(Testimony of Justin H. Wheeler.)

Q. But when you released this belt and then you had to stand there to hold one hand on the idler pulley, as if the belt were on it, you dropped the idler pulley and the automatic device kicked out?

A. Yes.

Q. Now, had you actually changed this belt from the driving pulley to the governor pulley that day, or just the other belts?

A. I think it was the other belt. I'm not positive of that.

Q. Well, then, if it was just the other belt, wouldn't this belt hold the idler pulley up in place?

A. Maybe I don't just understand the question.

Q. Well, come down here. Pointing to Exhibit 8, the little wheel here in the center is what's known as the idler pulley, isn't it?

A. That's right.

Q. And that you said you held up with your hand?

A. This is the weight that's supposed to hold that up; well, we keep it fastened with a chain here, because the weight really doesn't give quite enough pull on the belt, so we fasten that, and when we change, we unhook our chain here and hold this up so it takes the tension off of the belt, and we have to hold that up while we take this belt off, and put the other belt over. Now, this is on the high speed, and the slow speed, the belt goes over on the smaller pulley, which is directly behind this one, and then runs on this big pulley here.

Mr. Kelley: May the record show that the witness's testimony is pointing out and illustrating by Exhibit 8?

The Court: Yes.

(Testimony of Justin H. Wheeler.)

Q. Then which belts or belt was it that you changed the day before?

A. Well, as I say, I do not recall whether I was changing from high to low, or the reverse. I was changing it, but I would not say whether we was going from high to low or the other way. [165]

Q. Well, was it these belts that operate on the cone pulleys?

A. Oh, no. It was just this one belt. We only change the one belt.

Mr. Kelley: Are you indicating the belt on the Pickering governor?

A. The one on the Pickering governor.

The Court: I wonder if counsel isn't talking about one thing, and the witness another. He said "change the belt"; I don't think he meant replace the belt, just change from one to the other.

Q. (By Mr. Paine): Is that right, when you use this other pulley you have a different sized belt?

A. Yes, different length.

Q. So if you had that one on that day, and you wanted to come back to the shorter, is this the shorter of the two belts shown in the picture?

A. This is the shorter of the two belts.

Q. So that if you took the longer of the two belts off, then you would go over to the wall some place and pick out a shorter belt and put it on here, and that's what you did that afternoon. Of course, this is a picture taken some time later. You don't know which it was, whether you took a longer one off and put on a shorter one? [166]

(Testimony of Justin H. Wheeler.)

A. I don't recall, but I might add that belt might have been changed a couple or three times between the time I changed it and the time it was wrecked, because we sometimes have small orders of paper and we don't run but a short time on a certain speed.

Q. So someone else might have changed it after you did?

A. Absolutely; the man that was on shift did it, if it was done.

Q. You go to the wall and pick one off?

A. We pick the one that belongs in the place where it wants to go.

Q. But in doing that, as you said, you had to then hold the rider pulley up, and you let it fall to get your hand free, and that shut the engine off, as it should do?

A. Well, the engine was stopped. We don't do that when the engine is running.

Q. My error. You'd get in a lot of trouble if you did that. The engine was off, but it still kicked this device? A. It kicked out.

Q. As it would have done if it had been running. Now then, you came back about 2:30 and you're quite positive that you went and found this device hadn't operated?

A. I noticed it when I walked by the engine. I had to go by the engine to go to my locker to change my clothes. I noticed the butterfly was out, and the Pickering was [167] not out.

(Testimony of Justin H. Wheeler.)

Q. And did you later in the day make some tests on it with Mr. Olinger?

A. Well, after he came. He wasn't there at the time I took over the shift.

Q. Yes; not that day, but—yes, he got there—no, he didn't get there until the 5th.

A. No, he wasn't there that day.

Q. On the 5th you made some tests with him?

A. Well, we looked it over, yes. I looked it over with a half dozen different men, not only my partner, but with Mr. Janecek and the insurance men also. We looked it over.

Q. And at that time you found that it didn't work?

A. Well, I found that the first time, the first thing.

Q. Well, you found that it hadn't worked, the first thing, but did you try it after that?

A. Well, you could work it by hand.

Q. You could work it by dropping the rider pulley?

A. No, not until after they tightened the set screw.

Q. Now, let's get to this set screw. This set screw is a little screw that goes into this—what do you call it, the trigger arm? A. Well, yes.

Q. That comes down and lies on the plate? [168]

A. Well, it has an eye in the end.

Q. It comes into a rod here and is fastened with a little screw that goes down and rests or bites into this arm, is that correct? A. That's correct.

(Testimony of Justin H. Wheeler.)

Q. And that's a little inset hexagon screw; you have to have a special wrench to loosen it or tighten it?

A. No, the set screw in there was an ordinary set screw with a square head, which stood up; it wasn't a sunken set screw.

Q. It wasn't a sunken set screw?

A. Not at that time.

Q. You feel quite sure about that?

A. I am.

Q. It had a little head on it that you could turn?

A. A square head.

Q. Could be tightened or loosened by anybody applying a wrench to it?

A. That's right.

Q. If anybody had touched that or loosened it it would be loosened up?

A. It could be, if anyone would, but I don't know why anybody would; it was under that plate which holds the outboard bearing of the governor shaft. It was in a kind of a peculiar place to get at anyway. That's one of the [169] reasons why it probably hadn't been looked after, was it being up there out of sight, and it was tight the day before, and it was tight when it was put on. It just naturally worked loose.

Q. And it was tight the day before?

A. Enough to hold so that it tripped.

Q. And did you hear Mr. Janecek's testimony that after this he operated it four or five times, three or four times, with Mr. Olinger?

A. No, I didn't. I couldn't hear any of the testimony.

(Testimony of Justin H. Wheeler.)

Q. Did you ever talk with him or learn from him that it operated four or five times, every time they tried it, after the accident?

A. No, I didn't

Mr. Kelley: That's incompetent, if the Court please, after the accident.

Mr. Paine: We've got it tight immediately before the accident and immediately after the accident.

The Court: He's answered that he didn't talk with Mr. Janecek. A. Beg pardon?

The Court: As I understand, you said you didn't talk about it with Mr. Janecek?

A. No.

The Court: All right, go ahead. [170]

Q. (By Mr. Paine): That screw could be loosened by applying a wrench to it and loosening it up?

A. Certainly.

Q. Do you think it could be loosened by merely operation of the machine itself?

A. Vibration; there's a certain amount of vibration on those high speed engines.

Q. And do you go around frequently and tighten it up, keep it tight?

A. Well, probably not as often as we should have. I'll admit that on my own part, but those machines are in continuous operation 24 hours a day and a good deal of the time seven days a week.

Q. And they require a constant tightening of that screw; it should be kept tight?

(Testimony of Justin H. Wheeler.)

A. There's lots of things that require tightening, and we do tighten them, absolutely, where it has to be done, absolutely necessary.

Q. Now, in regard to the butterfly valve, you found the lever down, is that what you mean?

A. Yes, that was down.

Q. You didn't at that time look to see how far or what the butterfly valve had done in the way of closing the steam line?

A. No, I just inferred it was down to the seat. I couldn't [171] positively say, although I know the lever was hanging down very nearly straight.

Q. Now, there have been several occasions out there where with the butterfly valve closed the machine has operated and the paper machine has run?

A. There's very few of those butterfly valves that close absolutely tight so but what there's a little steam leaks through, and especially if the engine is running before it does kick out, it will continue to revolve at a slow speed.

Q. Well, it has continued to revolve sufficiently fast to operate the paper machine on occasions; do you remember that?

A. Well, I don't recall any circumstances where it did.

Q. Don't you remember telling the Hartford men that there were occasions where the paper machine had operated with the lever in a dropped position?

A. No, I don't remember.

Q. You wouldn't say you didn't?

(Testimony of Justin H. Wheeler.)

A. I don't think I did, because I don't think steam enough would get through to do that, unless it was on a heavy sheet and a very slow speed. Those engines, this engine in particular, we operate anywhere from 25 revolutions a minute up to 230.

Q. Now, you remember when they conducted the tests there of [172] the butterfly valve and you were on the throttle, I think it was on the 5th of July, or the 7th of July, they were out there and ran the engine and operated the butterfly valve, on the 7th of July? A. I couldn't tell the date.

Q. But you remember the circumstances?

A. I remember about their being there several times.

Q. Well, do you remember tests that were made by the Hartford men within a day or two after the accident; you were on the throttle and they operated the machine and closed the butterfly valve?

A. Yes.

Q. And the machine ran away, and you had to shut it down with the throttle; do you remember that?

A. Yes, there was no load on it; that was just the engine itself.

Q. The engine itself, but without a load on it, the engine ran away and to save it you had to operate the throttle and stop the steam?

A. I stopped it with the throttle.

Q. Because it was running away?

A. It was running too fast.

(Testimony of Justin H. Wheeler.)

Q. With the butterfly valve presumably in the closed condition? A. Yes. [173]

Q. Now, if anybody had wanted to tamper with the Pickering governor so that it would make it in-operative, all they'd have to do would be to turn that little set screw a short turn and then it wouldn't operate?

Mr. Kelley: I object; that's incompetent, irrelevant and immaterial. I'm a little diffident about objecting. We haven't a jury, and I realize your Honor probably allows many things you wouldn't if we had a jury.

The Court: I'll sustain the objection to that. I think that's obvious.

Q. (By Mr. Paine): Do you remember what you said to Mr. Olinger the day you and he went over to try the Pickering governor? Did you say something to the effect "I'll show you why this thing didn't operate, or what cause the accident"?

A. I think I told him about the levers being loose, on the trigger.

Q. All right. Now, then, when was it that you found that it was loose on the trigger?

A. As soon as I made the examination.

Mr. Kelley: That's repetition, if your Honor pleases.

A. That was one of the first things I did, virtually the first thing I did after I took over the shift and checked [174] my other engines, I examined that, because I wanted to know why it didn't trip out when it tripped out the day before, when I was

(Testimony of Justin H. Wheeler.)

changing the belts. I couldn't understand that, but it was easy enough to see, for me, being familiar with it, that that rod was loose on the trigger finger so that it didn't trip.

Q. Did you touch the mechanism at 2:30 and do anything to it? A. No, sir.

Q. You just looked at it?

A. I just looked at it.

Q. By merely looking at it, all you could tell was it hadn't tripped, isn't that right?

A. I worked the end of the rod.

Q. All right.

Mr. Kelley: Let him finish, please.

Q. (By Mr. Paine): That's what I want to get at, whether you touched it or what you did with it.

A. I touched the end of that trip rod enough to see that it was loose on the trigger finger rod. That's the way I determined it was loose. I had to take the end of it and moved it a little, and it didn't move the trip rod, the trip finger.

Q. Did you touch the set screw?

A. I didn't, no. [175]

Q. Then how would you account for the fact that after that it worked four or five times, correctly every time?

A. I have no explanation, no explanation whatever for that. I'm simply telling you what my observation was when I took over.

Q. Did you make any statements before that all you had ever done was to look at that device, that you hadn't tampered with it or touched it?

(Testimony of Justin H. Wheeler.)

A. No, I don't think anybody ever asked me anything about it.

Q. You don't think you were ever asked that. When was it you first told Mr. Black or any of the company people about the fact that you had observed it being not tripped?

A. When did I first tell them?

Q. Yes.

A. Oh, I couldn't say whether it was that same day or not.

Q. Well, wasn't it some time later they were trying to get in touch with you to find out who was the first person who had seen this governor stop and what condition it was in, you were called in to tell them, and you told them?

A. I don't recall that. There was so many people around there that I wouldn't absolutely say there wasn't but I don't recall it. [176]

Q. Yes; well, that's all right. Do you remember telling Mr. Fullmer, the inspector from the Hartford, when he first questioned you about it, that you didn't know what the condition of the governor trip stop was?

A. No.

Q. You never told him that?

A. No.

Q. And did you tell them when you were present there on July—no, the August meeting, when they were all out there about the 2nd of August, that you never touched the trip device on the governor?

A. That I never touched the trip device?

Q. Yes, when you looked at it that you never touched it.

(Testimony of Justin H. Wheeler.)

A. I didn't touch the screw; I just touched the end of that rod so to see it was loose on the trigger arm.

Q. Did you tell them you never touched any of it?
A. I don't think I did.

Q. You don't think you said that?

A. No, sir.

Q. Did you ever see anybody else the day of the accident around the device or doing anything with it, touching it?

A. Well, I saw any number of them around looking at it. I couldn't positively say whether they touched it or not, because I was on shift and I had my other duties to do, and I wasn't watching them at all. I satisfied myself [177] on the start of what the cause was, that it didn't trip, and then I let the rest of them form their own conclusions. As I say, I was busy with my other duties. I had three other engines to service and watch, and I paid no attention to them. Part of the time I'm out of the room.

The Court: You've answered the question now.

Mr. Paine: I think that's all.

Mr. Kelley: That's all.

(Whereupon, there being no further questions, the witness was excused.)

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

Spokane, Washington, Wednesday, October 8, 1947,
1:30 o'clock P. M.

(All parties present as before, and the trial
was resumed.)

FRED BEGUELIN

called as a witness on behalf of the plaintiff, being
first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is Fred Beguelin?

A. That's right.

Q. And what job do you hold with the Inland
Empire Paper Company? [178]

A. Master mechanic.

Q. How long have you held that position at that
company? A. About five years.

Q. How long have you been associated with that
company? A. 23 years.

Q. Outline in a general way the nature and ex-
tent of your duties as master mechanic there at the
Inland Empire Paper Company?

A. I was simply in charge and responsible for
the operation and maintenance of the plant.

Q. Machinery? A. Machinery.

Q. Including the Sumner steam engine and the
main line shaft and the number 4 paper machine
here under discussion? A. That's right.

Q. Were you at the plant of the Inland Empire
Paper Company when this accident happened on
July 3, 1946? A. No, I wasn't.

(Testimony of Fred Beguelin.)

Q. When did you get to the plant that day, if you did get there that day?

A. Sometime in the late afternoon; it was after 4:30, I'm positive.

Q. And when you were there did you observe the main belt leading from the Sumner steam engine to the main line shaft in the basement? [179]

A. Yes, I did.

Q. Will you just tell the Court in your own words where the main belt was when you saw it, and as to whether or no it was loose or slack?

A. Well, the belt was very loose, and the pulley had pulled forward and toward the north, oh, approximately 8 to 10 feet from where it should have been.

Q. By the way, by the pulley, what pulley are you referring to?

A. The driven pulley from the engine.

Q. Is that the pulley set forth in Exhibits 3 and 4? A. That would be this pulley.

Q. You're indicating the pulley in the lower left hand corner of Exhibit 4? A. That's right.

Q. What kind of a belt was that main belt?

A. It was a heavy rubber belt, nine ply.

Q. Where was this belt when you saw it the day of the accident?

A. Well, the belt was lying on the floor, and it was around the twisted line shaft and the broken parts of the pulley.

Q. When that main belt is slack or loose, as you testified, was it possible for it to move sideways at the time of the accident? [180]

A. I would say it would be, yes.

(Testimony of Fred Beguelin.)

Q. And if it went toward the north what object would it touch? A. The fly-wheel.

Q. And if it had touched the fly-wheel while that was in motion, what would have resulted?

A. Well, I imagine the belt would just about have to move in the other direction at the other end, I suppose.

Q. And if it moved in the other direction, would that be to the south? A. It would, yes.

Q. State whether or not that would be in close juxtaposition to the trigger that I'm indicating on Exhibit 11? A. Yes, it would.

Q. If you know, about how far is that trigger from the main pulley there that the main belt is driving?

A. Well, it's dead in line, I think almost exactly in line, with the face, and perhaps half or three quarters of an inch away from the rim.

Q. Could this main belt have hit the trigger by the fact that it was slack? A. It could.

Q. Now, that trigger operates what is known as the Brownell [181] overspeed stop?

A. That's right.

Q. Had you ever overspeeded this Sumner steam engine to the tripping point of the Brownell overspeed stop, before this accident? A. Yes.

Q. Do you have any idea how long before?

A. Well, I would think it was two or three months before that I done that.

Q. And did you do that overspeeding while it was connected with the main line shaft?

A. That's right.

(Testimony of Fred Beguelin.)

Q. By the way, the day of the accident and subsequent you had occasion to survey the nature and extent of the damage there at the plant?

A. I did.

Q. And did you observe any damage to the main line shaft??

A. Yes.

Q. In a general way tell us what that was. For your information, Mr. Beguelin, it's already been stipulated as to the amount, but if you could just in a general way indicate the character and nature of that damage.

A. Well, it was just a tangled mess lying on the floor away from the line shaft bearings. It had been more or less corkscrewed and twisted all over the basement; [182] bearings were broken, couplings were broken, pulleys all smashed.

Q. Are there any windows in that plant, in the basement?

A. Yes.

Q. Did the damaged parts have any effect upon those windows?

A. It broke several windows.

Q. Do you know whether any of the damaged parts went out of the window?

A. Yes.

Q. Do you know what they were?

A. Well, there was a piece of a spoke and hub, If I remember right, of a pulley, found outside about 300 feet, I imagine, from the building.

Q. Was that a good sizeable piece of the machinery?

A. Oh, I would say it would weigh about 35 or 40 pounds.

(Testimony of Fred Beguelin.)

Q. And it had been hurled a distance of what?

A. Oh, two or three hundred feet.

Q. Now, going back to the time that you overspeeded the Brownell overspeed stop, this material that you've just referred to as being damaged by the accident, was that all running at the time you did your overspeed test? A. It was.

Q. By the way, do you know what the speed of the Brownell overspeed stop was set at? [183]

A. Well, we tried to keep it as near 700 feet as we could.

Q. Why was that?

A. Well, the speeds that they operated at were around 670 to 690, and we kept it as close to that as possible.

Q. Going back to the time that you tested it by overspeeding, was any of this machinery of the mill damaged by the test? A. No.

Q. Or by any such overspeeding? A. No.

Q. How did the you test the Brownell overspeed stop?

A. By opening the throttle wide open and screwing the cone belts on the transformer over to and beyond where the highest speed we operated. There's a chart on there that gives the different speeds, and you go beyond that, and that keeps the governor at a uniform speed, but speeds up the engine.

Q. What is the construction of that engine pulley on which the main belt to the main line shaft rested?

(Testimony of Fred Beguelin.)

A. The construction of the one that broke, on the line shaft?

Q. The engine pulley.

A. The engine pulley is a split pulley with a heavy drop rim.

Q. How was that again? [184]

A. It is a cast iron split pulley with a heavy drop rim.

Q. Sorry, I can't get that last.

A. Drop rim.

Q. Have there been any changes in the safety devices on the governor or the stop since the accident?

A. No, there hasn't; not to my knowledge.

Mr. Kelley: You may inquire.

Cross-Examination

By Mr. Paine:

Q. You're the master mechanic; that's your title? A. That's right.

Q. And you have charge of all of this equipment, is that right? A. Yes.

Q. And I believe you made this stop that's on the governor, is that right? Was that made there in the shop? A. It was made in our shop.

Q. And when was it installed?

A. Probably three years ago. That's a guess, of course.

Q. That would be 1944?

A. Probably.

Q. Refreshing your recollection, wasn't it in the summer of 1945?

(Testimony of Fred Beguelin.)

A. Well, it could have been, now. I'm kind of hazy on that. It could have been.

Q. Do you remember the circumstances of how you came to [185] install it?

A. It was recommended by the insurance company.

Q. Recommended by the insurance company that a stop device of this sort be put on?

A. That's right.

Q. And you made it and put it on?

A. That's right.

Q. Now, just step down here just a minute. Then, I believe, did you bolt in and put on this idler pulley too? A. No.

Mr. Kelley: I wonder if the record should show that counsel is directing the witness's attention to Exhibit Number 8?

The Court: Yes.

Q. (Mr. Paine): Was this idler pulley placed on there? A. Not at that time.

Q. Not at that time?

A. No, that was always on there from the time the engine was installed.

Q. Now, I wonder if—maybe this isn't strictly proper cross-examination, Mr. Kelley, but since he made this object he's best qualified to give us a little discussion on how it operates. I wonder if you could explain, Mr. Beguelin, just how this device that you put on the governor operates as a governor stop? [186]

A. Any time that this belt breaks this pulley will go——

(Testimony of Fred Beguelin.)

Q. This is on Exhibit number 8.

A. —and there's a device on the other side, that's not visible here, that contacts this bar; that bar is hinged right below here, and has a little dog that comes up in behind there that knocks the ratchet off of the automatic stop.

Q. And the arm coming down towards the lower left hand corner of the picture with the weight on it is put there so that when the tension of the belt is taken off the weight falls down in an arc, toward the center of the picture, and that swings the wheel upward, and this little bar that you can see right below the wheel is resting on a sort of a plate out there—would you call it a plate?

A. It's a little pin, that actually doesn't touch it, because this idler is moving, and if it touches, it would kick it out, so it has to be out a little ways.

Q. If it comes up it hits it; it doesn't have to hit it very much? A. Very little.

Q. And that force is carried up to this device in back of the wheel, and that in turn trips out the spring of the ratchet on the other side?

A. That's right. [187]

Q. And up in back is where it is set, with a set screw holding this little arm into the sleeve into which it fits, is that right?

A. That's right.

Q. What kind of a set screw was put in there?

A. Well, I had the impresion it was an Allen safety set screw. It may have been changed. Mr. Wheeler said it was a square head set screw. It could be.

(Testimony of Fred Beguelin.)

Q. Your impression was when you made it it was an Allen head screw? A. That's right.

Q. That's the type that the head is sort of hollow and you have to put your wrench down in the head to tighten it?

A. That's right, but that may have been changed by somebody because it was too inconvenient; I don't know.

Q. But when you originally put it in it was an Allen type set screw? A. Yes.

Q. And to the best of your recollection was it still that?

A. I don't remember. I didn't look at that set screw, and I wouldn't say whether it was on there or not at the time.

Q. You say one with a head might have been put on to make it easier to set. Do they have to keep setting that set screw? [188]

A. They shouldn't have to, but it's possible, if the engineers didn't always have those kind of wrenches, they might have wanted one with a square head to tighten it or loosen it.

Q. As a rule, it's put in tight and it's supposed to stay tight? A. Yes.

Q. Did you observe this as soon as you came to the plant after the accident?

Mr. Kelley: By "this" what do you mean?

Q. The governor control device, stop device.

A. Yes.

Q. That was about 4:30 in the afternoon?

A. Somewhere around in there.

(Testimony of Fred Beguelin.)

Q. What condition did you find it in?

A. I found out it wasn't tripped when I looked at it.

Q. It was, or it wasn't?

A. It was not tripped.

Q. It was not tripped?

A. Just a minute. You've got me confused. It was tripped.

Q. And you so informed Mr. Black and the officials of the company and the Hartford people, when you got there it was tripped?

A. I believe I told them that at one time.

Q. Now, this test that you made in regard to the device, [189] the Brownell device on the fly-wheel, you say you made that a couple of weeks before the 3rd of July?

A. No, it was quite a while before that, I think.

Q. Oh, I misread this. Two or three months, I think you said.

A. Probably a couple of months.

Q. Two or three months before that would be along in April or May?

A. It would have been April or May, either one of those months.

Q. And you deliberately over-speeded the engine? A. That's right.

Q. And this Brownell device on the wheel was set to stop the engine at about 250 or 300 revolutions per minute?

A. Yes, whatever would correspond with about 700 feet.

(Testimony of Fred Beguelin.)

Q. Well, I think the testimony is already in that you divide 700 by 2.52. A. That's right.

Q. Which would be somewhere in the neighborhood of 250 to 300 revolutions a minute?

A. That's right.

Q. And you were testing to see if the device tripped at that point? A. Correct.

Q. And when it tripped, then you slowed the engine down and [190] you were satisfied with your tests?

A. We were satisfied that it kicked out and slowed down.

Q. And you didn't let it run on again, even after the butterfly valve had gone into a presumably closed condition, to see whether it would operate after that?

A. Well, on other occasions we've done that. Several times we have let it come to a stop. Generally after we see it kick out that's all we consider necessary.

Q. You stop the engine and go back to your normal operation? A. That's right.

Q. Have you known of instances there where there's been overspeeding, and the butterfly valve has been closed, and still the paper machine was operating?

A. No, I don't know of anything like that. I've heard of it, but I really didn't believe it.

Q. You've heard of it, but you haven't seen it yourself?

A. No. I don't see how it would be possible.

(Testimony of Fred Beguelin.)

Q. But you've heard stories around the plant that that's what occurred?

Mr. Kelley: Oh, I object to what he heard.

The Court: Sustained.

Q. (By Mr. Paine): Now, your suggestion here is that it is possible after this wheel attained considerable speed, that this belt came off and went over and tripped this mechanism? [191]

A. I would say it is possible, yes.

Q. You've never seen or heard of that having happened? That's purely a hypothetical assumption on your part?

A. No, it isn't. Several years ago the belt didn't want to stay on the pulley, and it would go over and knock that out. That's been a good many years ago.

Q. You mean it went over once?

A. I believe it went over over once; once or twice, and struck that trigger.

Q. That trigger is flying around there, of course, at a pretty high rate of speed?

A. The trigger is stationary.

Q. Well, the trigger is stationary, and the wheel is revolving; the trigger doesn't revolve with the wheel?

A. No.

Q. The general condition there of the room around the engine where the number 4 engine was located was pretty well littered up with debris from the twisting, breaking, and line shafting?

A. Yes, it was considerably littered up. In fact, it looked like quite a mess.

(Testimony of Fred Beguelin.)

Q. It was quite a mess; parts had flown all around that room? A. That's right.

Q. Did you observe the governor belt at that time at all? [192]

A. No. When I came in the governor belt had already been picked up and hung up or laid on a bench there, I believe; I'm not quite sure.

Q. Had you tested this Pickering device that you built at any time previous to the accident?

A. Yes, we did that repeatedly before the accident.

Q. It always worked all right?

A. It always did when I tried it, yes.

Q. When you went there to look at it you expected to find that it had worked, didn't you?

A. That's right.

Q. Did you have anything to do with the removal of the butterfly valve after the accident?

A. Yes.

Q. When was it disassembled or taken out of the line?

A. Well, it wasn't too long after the accident. One of the insurance representatives wanted it removed for observation, and it was taken off for inspection. I wouldn't say just exactly when it was. It was after the accident.

Q. Were you there when it was set up and tested after the accident? A. Yes.

Q. And at that time it did not shut off the engine, Mr. Wheeler had to shut it off by the throttle, is that [193] right? A. That's right.

(Testimony of Fred Beguelin.)

Q. And was it then taken into the shop and examined?

A. I don't know; we only had it in the shop once, and I believe that was after we had it in the shop. Now, I wouldn't say.

Q. The first test that was made was just after it was taken out of the line, before it was taken into the shop?

Mr. Kelley: I wonder if counsel would fix the time.

Q. On the 7th of July.

A. That might have been the date, and it was taken out, I know, and taken to the shop and re-installed, and I think that was the only time. It might have been done otherwise that I didn't know anything about.

Q. You think that test that they made on the 7th was the only one, then, that you know about?

The Court: He said "yes." You'll have to speak up by voice.

Q. Did you examine the stuffing when it was taken into the shop? A. Yes.

Q. And was the stuffing binding on the valve stem? A. It was a little tight.

Q. So that it would permit steam to go through; not close [194] tightly?

A. Well, it could be that way.

Q. Well, that's your best recollection, that it was that way? A. Yes.

(Testimony of Fred Beguelin.)

Q. And when it was taken out and tested the steam ran away, and the steam had to be shut down, to stop it?

A. Well, I wouldn't say it was running away. It just wouldn't stop.

Mr. Paine: It wouldn't stop. I think that's all.

Redirect Examination

By Mr. Kelley:

Q. Mr. Beguelin, was the ratchet wheel on the Pickering governor tripped when you saw it late the afternoon of the accident? A. Yes.

Mr. Paine: I think he's already answered that.

Q. The ratchet wheel?

A. That's in direct connection with the entire mechanism. It would have to be.

Q. You saw that the belt was not there, the Pickering governor belt?

A. No, the belt wasn't there.

Q. Counsel has directed your attention to the butterfly valve which you say was taken out for observation. You observed the day of the accident that the pin hadn't [195] been pulled through the eyes of the butterfly valve there, the chain connection?

A. Yes.

Mr. Kelley: That's all.

(Whereupon, there being no further questions, the witness was excused.)

MYRON W. BLACK

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Kelley:

(Whereupon, the reporter read the last question and answer, as follows: "Question: As shown on Exhibit 4, and the engine belt was thrown diagonally across the room, is that it? Answer: Yes, in that direction.")

Q. (By Mr. Kelley): The main belt of the engine pulley that you're referring to, Mr. Black, is shown in plaintiff's Exhibit 4?

A. That's correct.

Q. And after the accident where did you observe that belt to be?

A. The belt was lying, it was pulled away in this direction, and it was lying more this way, north-easterly.

Q. For your information, I believe the record shows that this is the northern half of the line shaft, and that in terms of the picture would be east, and that would be [196] west, and this would be south.

A. Yes; moving in that direction.

Q. Where was the engine pulley itself?

A. Well, the engine pulley was undamaged, in its normal position.

Q. But the driven pulley on the line shaft?

A. It was broken, and the hub of the pulley remained on the shaft.

(Testimony of Myron W. Black.)

Q. By the way, what is the construction of that engine pulley, the engine pulley of the Summer steam engine?

A. Well, it's a cast iron pulley. Mr. Beguelin testified it was split. I would believe him.

Mr. Paine: I didn't catch that last.

A. Mr. Beguelin testified it was a split pulley.

Q. Is that correct?

A. I'm not in a position to say that it is a split pulley.

Mr. Paine: That's merely a different type of pulley; you didn't mean it was split by the accident?

A. Type of construction.

Q. What are the two types of construction?

A. Solid or split.

Q. What is the difference between the two with reference to their critical speed?

A. Well, a solid pulley has a higher critical speed, normally, than a split pulley. [197]

Q. Have there been any changes in the safety devices on the governor or the stop since the accident? A. None whatsoever that I'm aware of.

Q. Did you advise the defendant Hartford Insurance Company after the accident that Mr. Wheeler, your stationary engineer, saw that the Pickering governor had never tripped when he examined it shortly after the occurrence of the accident, when he went on shift?

Mr. Paine: I didn't get the first part of that question.

Mr. Kelley: Read the question.

(Testimony of Myron W. Black.)

(Whereupon, the reporter read the last previous question.)

A. Yes.

Q. And in addition, did you advise them by letter of that fact? A. I believe so, yes.

Q. Do you recall what was the date of that letter?

A. Well, it was after the conference we had in the mill. That I believe was August 4. It was after that date, somewhere, I would say, in August or the first part of September.

Q. Of 1946? A. Of 1946.

Mr. Kelley: Just for the record, may we request a notice to produce in open court, if your Honor please, that letter from the Inland Empire Paper Company to the Hartford outlining that fact?

Mr. Paine: I think this is probably the one you want, Mr. Kelley.

(Whereupon, letter from Inland Empire Paper Company to Hartford Steam Boiler Inspection & Insurance Company dated August 20, 1946, was marked Plaintiff's Exhibit No. 13 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's exhibit for identification 13, and specifically to the last paragraph thereof, is that the letter you refer to? A. That's right.

Mr. Kelley: I'll offer the exhibit, specifically as to the last paragraph, on the point.

(Testimony of Myron W. Black.)

The Court: I suppose Mr. Paine had seen it, since he produced it.

Mr. Paine: I produced it, and I have no objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit No. 13 for identification was admitted in evidence.)

PLAINTIFF'S EXHIBIT No. 13

Inland Empire Paper Company, Manufacturers
Millwood, Wash.

August 20, 1946

Telegraphic Address
Spokane, Washington.

Hartford Steam Boiler Inspection & Ins. Co.
707 Artic Building
Seattle 6, Washington

Attention: Mr. Fred Fullmer

Dear Fred:

When Mr. McKeon was here there was one question left to be answered—that is, what was the condition of the governor after the wreck.

Mr. Coy was the engineer at the time of the wreck. After the wreck he stated he saw that the pin on the butterfly valve was pulled and the butterfly was closed but did not remember the condition of the governor, being too busy with other things to notice.

J. H. Wheeler was Mr. Coy's relief who came in about 2:15 p.m. He stated that when he came in

(Testimony of Myron W. Black.)

he looked at the engines right away. He says the butterfly valve was closed but that the governor had not been tripped. He is very positive in this statement.

This should answer our last question.

Very truly yours,

Inland Empire Paper Company
Myron W. Black

MWBlack:gm

(Received Seattle Aug. 21 1946 H.S.B.I.&I. Co.)

Mr. Paine: Just a moment, please. I didn't maybe understand Mr. Kelley's offer. Did I understand you to just offer the paragraph of this letter?

Mr. Kelley: I believe that's all, under the rules of evidence, I would be permitted to offer. Would you read it?

The Court: The whole exhibit was offered.

Mr. Kelley: Specifically as to the last paragraph. If it had been a jury I apprehend we would have covered the rest of it up, your Honor. I don't want to be hypertechnical.

Mr. Paine: I think the rest of it is material to the whole sum and substance of the letter, and I would object to the last paragraph going in without the whole letter going in.

Mr. Kelley: I assume the Court will read the whole letter.

The Court: The whole letter will be admitted for what it may be worth.

(Testimony of Myron W. Black.)

Q. (By Mr. Kelley): Now, to your personal knowledge, had the defendant Hartford Insurance Company ever tested this Brownell overspeed stop before the accident?

A. I did not see them test it, but I was told by their representative from time to time when they had tested it.

Q. What representative told you that?

A. Harry Olinger.

Q. And did he tell you how he tested it?

A. Yes, by overspeeding. [200]

Q. Until it tripped? A. Yes.

Q. And was there ever any damage to the machinery or any of it which was damaged as the result of the accident on July 3, 1946, as the result of these previous overspeedings?

A. I'm not sure that I got that question in its entirety.

Mr. Kelley: Would you read it?

(Whereupon, the reporter read the last previous question.)

A. These previous tests had been accomplished without any damage to the machinery that was damaged at the time of this accident.

Q. Speaking of damages, did you on or about September 12, 1946, outline and itemize the nature and extent of the damages which you claimed was covered by the policy and for which you are now suing the defendant?

A. That was itemized in the office, and I passed on it before it was forwarded.

(Testimony of Myron W. Black.)

Q. I should have asked, was this done under your direction and supervision? A. Yes.

Mr. Kelley: Just as a preliminary, may I for the record request a notice to produce in open court that certain memorandum from the Inland Empire Paper Company [201] under date of September 12, 1946, outlining in detail the nature and extent of the damage? It perhaps is unnecessary, but I want to make sure of the point, that it's in the record.

Mr. Paine: I have one here, Mr. Kelley, dated September 17.

Mr. Kelley: I thought it was the 12th. I may have been mistaken.

(Whereupon, letter from Inland Empire Paper Company to Hartford Steam Boiler Insurance Company dated September 17, 1946, with enclosures, was marked Plaintiff's Exhibit No. 14 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's identification number 14, is that the memorandum that you referred to a moment ago, together with your letter of transmittal?

A. Yes, this is the statement.

Mr. Kelley: I'll offer plaintiff's Exhibit 14.

Mr. Paine: No objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit No. 14 for identification was admitted in evidence [set forth on pages 455 to 464].)

Q. (By Mr. Kelley): What is the maximum speed at which your paper has been run through the number 4 machine?

(Testimony of Myron W. Black.)

A. Normally, the maximum speed—I'd say the maximum is [202] 690. That's the highest I'm aware of that machine having made paper. On newsprint we try to run, did try to run, somewhere between 670 and 690.

Q. By 690 you mean what?

A. Lineal feet per minute.

Q. Which corresponds to an engine speed of the Sumner steam engine of what?

A. Approximately 270.

Q. 270 what? A. R.P.M.

Q. R.P.M. means what?

A. Revolutions per minute.

Q. 690 feet per minute, then, is not quite double the machine was set to operate at the time of the accident?

A. That's right. It was supposed to be operating at 354, I believe, and this speed we're talking of is 690.

Q. What the are facts upon which you conclude that this Sumner steam engine ran away?

A. Well, we had a general wreck, and a general wreck could only have come from overspeed, and the overspeed can only have come from the prime mover, which is the Sumner steam engine.

Q. And the safety devices of that Sumner steam engine are how many?

A. Well, we'll say three, the Pickering governor, and the [203] overspeed, and the hand release.

Q. Well, the hand release is part of the Pickering governor?

A. Well, part of the safety stop, too.

(Testimony of Myron W. Black.)

Q. And directing your attention to Exhibit 8, and particularly this arm appearing therein, that was placed on by your company? A. That was.

Q. With the knowledge and consent and approval of the defendant Hartford Insurance Company? A. At their recommendation.

Q. Did you get specific recommendation from the Hartford Insurance Company in that regard?

A. Yes, there were.

(Whereupon, letter from Hartford Steam Boiler Inspection and Insurance Company to Inland Empire Paper Company dated January 30, 1945, was marked Plaintiff's Exhibit No. 15 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's exhibit for identification number 15, will you state what that is?

A. This is a recommendation that a safety stop such as the one under discussion be placed on this governor, and in case of a belt failure it would stop the engine, a belt breakage.

Q. That bears the date of what, by the way, while we're [204] waiting?

A. January 30, 1945.

(Whereupon, letter from Hartford Steam Boiler Inspection and Insurance Company to Inland Empire Paper Company dated April 25, 1945, was marked Plaintiff's Exhibit No. 16 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's Exhibit for identification 16, will you tell the Court what that is?

(Testimony of Myron W. Black.)

A. This is a similar recommendation for the Sumner Steam engine and a steam engine inspection report, and the recommendation that the safety stop be placed on the Pickering governor.

Q. Who sent it to you?

A. Well, it was forwarded over the name of J. G. Murray, as chief inspector.

Q. Who is J. G. Murray?

A. Signed as chief inspector for the Hartford Steam Boiler and Inspection Company.

Q. Do you know J. G. Murray? A. I do.

Q. Is he in the court now? A. He is.

(Whereupon, letter from Hartford Steam Boiler Inspection and Insurance Company to Inland [205] Empire Paper Company dated December 18, 1945, was marked Plaintiff's Exhibit No. 17 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's Exhibit number 17 for identification, what is that?

A. This is an inspection report with the note that the governors of these engines have been equipped with a mechanism which shuts the steam off when the governor belt breaks or runs off.

Q. Bearing date of what?

A. Date of December 18, 1945.

Mr. Kelley: I offer plaintiff's Exhibits 15 to 17 for identification.

Mr. Paine: No objection.

The Court: Identifications 15, 16 and 17 will be admitted.

(Testimony of Myron W. Black.)

(Whereupon, Plaintiff's Exhibits Nos. 15, 16 and 17 for identification were admitted in evidence.)

PLAINTIFF'S EXHIBIT No. 15

The Hartford Steam Boiler Inspection and Insurance Company, Hartford, Connecticut

Seattle Office

Arctic Building,

Seattle 4, Washington

January 30, 1945

E. G. Watson Manager

J. G. Murray Chief Inspector

Report of Inspection

Date of Inspection January 20, 1945. Inspector H. L. Olinger.

Location Assured's Plant, Millwood, Washington.

Brownell Steam Engine No. 6974

Sumner Steam Engine No. 4

Inspected while in operation.

The only means of safety stops on these engines are the independent mechanical operated stop in the fly wheel. In order for this safety stop to operate the engine must overspeed. With only this type of stop should this mechanism fail serious results might follow.

We would recommend that the governors be equipped with safety stops in order to prevent overspeed should the belt or chain break or run off.

(Testimony of Myron W. Black.)

We will appreciate your giving this your careful consideration and these conditions were discussed with Mr. Black, at the time of inspection.

Yours very truly,

J. G. MURRAY,

Chief Inspector.

Form 195 FHF:FM

Original and 1 to M. A.

(To Inland Empire Paper Company, Millwood, Washington.)

(Received Feb. 1-A.M. Answered.)

PLAINTIFF'S EXHIBIT No. 16

The Hartford Steam Boiler Inspection and Insurance Company, Hartford, Connecticut

Seattle Office

Arctic Building,

Seattle 4, Washington

April 25, 1945

E. G. Watson Manager

J. G. Murray Chief Inspector

Report of Inspection

Date of Inspection April 22, 1945, Inspector H. L. Olinger.

Location Assured's Plant, Millwood, Washington.

Steam Engine, Sunner, No. 4

Steam Engine, Brownell, No. 6974

Inspected while at rest.

The only means of a safety stop on these engines are the independent mechanically operated stops in

(Testimony of Myron W. Black.)

the fly wheel. In order for this safety stop to operate the engine must overspeed. With only this type of stop should the mechanism fail, serious results might follow.

We would recommend that the governors of these engines be fitted up that in case the governor belts or chain should break or run off the governor valve will be closed automatically.

The conditions have been reported at a previous inspection and we understand that consideration is now being given to installing such a safety stop.

The conditions outlined were discussed with Mr. Myron Black, at the time of inspection and we understand they will receive proper attention.

Steam Engine, American Ball, No. 5729

Inspected while at rest.

No conditions were observed that require attention at this time.

Yours very truly,

J. G. MURRAY,

Chief Inspector.

(To Inland Empire Paper Company, Millwood, Washington.)

(Received April 26 A.M. Answered.)

Form 195 FHF:FM

(Testimony of Myron W. Black.)

PLAINTIFF'S EXHIBIT No. 17

The Hartford Steam Boiler Inspection and
Insurance Company, Hartford, Connecticut

Seattle Office

Arctic Building,

Seattle 4, Washington

December 18, 1945

E. G. Watson Manager

J. G. Murray Chief Inspector

Report of Inspection

Date of Inspection December 16, 1945. Inspector H. L. Olinger.

Location Assured's Plant, Millwood, Washington.

Brownell Steam Engine No. 6974

Sumner Steam Engine No. 4

Inspected while at rest.

The governors of these engines have recently been equipped that the mechanism will shut the steam supply off should the governor belt break or run off. We appreciate your cooperation in the completion of this recommendation.

American Ball Steam Engine No. 5729

Inspected while at rest.

No conditions were observed that require attention at this time.

Yours very truly,

J. G. MURRAY

FHF:FB

Chief Inspector.

Original & 1 to M. A.

(To Inland Empire Paper Company, Millwood, Washington.)

(Received Dec. 20 A.M. Answered)

(Testimony of Myron W. Black.)

Mr. Kelley: You may inquire.

Cross-Examination

By Mr. Paine:

Q. You were down how soon after the accident, into the engine room?

A. It's hard to say. I was in the office of the mill at the time of the accident. One of the boys who saw the accident [206] came in and told me about it, and I went out. I would guess anywhere from five to fifteen minutes.

Q. But everything was over, the engine was stopped, by the time you got there?

A. No, the engine was still running by the time I got there, number 4 engine.

Q. Number 4 engine was still running at the time you got there? A. Yes.

Q. Idling?

A. Yes, idling at a slow speed.

Q. Was it stopped while you were there, and the steam shut off? A. Yes.

Q. So the steam being shut off wasn't until 10 or 15, or 5 or 10 minutes afterwards, at any rate?

A. Yes.

Q. What was the condition of the pulley on the line shaft? Was it still wrapped up in the main belt? What was its condition?

A. Well, there was nothing much left of any of the pulleys except the hubs. My memory is that the hub and possibly part of the flange were left on the pulley, but the hub was over to one side from where it would normally run.

(Testimony of Myron W. Black.)

Q. I gather there was not much left of it. Was the rim [207] torn off the hub?

A. A part of the rim was torn off, and maybe all of it; I'm not sure; of this particular pulley?

Q. Yes, of this particular pulley.

A. Some of them were down to nothing but hubs, and some of them were just pieces broken out.

Q. But this particular pulley, part of the rim was off, and some of the spokes, and down pretty well to the hub?

A. Yes, I think that's fairly stated.

Q. And this rubber belt pretty well cut up, or was it in pretty good condition?

A. Which rubber belt, may I inquire?

Q. From the engine to the line shaft.

A. It was somewhat damaged, but not enough that we couldn't put it back on the engine after those repairs were made.

Q. There were tears in it that had to be patched up?

A. There were minor, very minor.

Q. The general condition there was pretty well cluttered up with broken pieces of shafting and pulley and so forth?

A. Well, along the line shaft it was a mess, because the line shaft was twisted and torn and the pulleys were on it. After you got back from it a ways you didn't see so much evidences of damage.

Q. Now, you carried insurance on the engine and on the paper machine, is that right? [208]

A. Well, parts of the paper machine. On the engine and parts of the paper machine.

(Testimony of Myron W. Black.)

Q. The felts, some of those parts, weren't insured?
A. No.

Mr. Kelley: Thank you, Mr. Paine; would you permit the interruption while I identify the main thing in this lawsuit, the insurance policy?

(Whereupon, policy No. 97-743 and various schedules was marked Plaintiff's Exhibit No. 18 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's exhibit for identification 18, what is that?

A. That's the insurance policy, the Hartford Steam Boiler Inspection and Insurance Company to the Inland Empire Paper Company, showing the different items which were covered by insurance.

Mr. Kelley: I would like to offer this exhibit with the request, if your Honor pleases, that we might stipulate that accurate copies be substituted for it if that should become necessary. I imagine one of the reasons I didn't get around sooner, so many people have been trying to look at it.

The Court: Do you have any objection to that? He's offered it in evidence, first. Do you have any objection to the offer? [209]

Mr. Paine: No objection.

The Court: Are you willing to agree that a copy may be substituted for the original if it becomes necessary or desirable?

(Testimony of Myron W. Black.)

Mr. Paine: I have no objection. I think if he collects on this he won't use it any more. It's expired.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit No. 18 for identification was admitted in evidence.)

[Plaintiff's Exhibit 18 is identical with Exhibit A attached to Complaint and is set forth on pages 9 to 32.]

The Court: All right, proceed with the cross-examination.

Cross-Examination

(Continued)

By Mr. Paine:

Q. Were any of the parts of this broken line driven pulley close to the number 4 engine, in relation to it, near it?

A. Well, I don't remember seeing any parts right around, the parts themselves lying in or around the engine; however, there were evidences of where parts had come through or passed that.

Q. You mean passed by the engine?

A. Yes.

Q. Or gone over beyond it; I think there was some damage to the lubricating pipes of the engine?

A. Well, the crankcase guards were somewhat damaged; the lubricators that lubricated the crank pin were—oh, they had shown some abuse. [210]

Q. Well, as though some object had hit them in passing?

A. Yes.

(Testimony of Myron W. Black.)

Q. Or during this explosion, but which one it was, whether this particular pulley or some other part of the line shaft, you wouldn't know?

A. No.

Q. You can't put them back in place, I presume. Before we get away, maybe, from physical effect, could you tell whether it was the first wire pulley at the end of the line shaft that gave way?

A. I have no way to reach a conclusion on that at all, not being there, and I wouldn't want to conclude anything like that from the wreckage.

Q. Well, did the line shaft show the effect of twisting and turning, as though it had become loosened at the far end and been permitted to swing and turn?

A. Well, it was twisted from one end to the other. Whether it might have started at this end and gone that way, or the other end, or in the middle, it's purely speculative.

Q. If it had started at the engine and broke, that would have released any pull on it? A. Yes.

Q. If it started on the far end, you would have had a whipping effect on the whole line shaft if it continued to be attached to the engine? [211]

A. Yes, but if it bent you wouldn't have stopped the whipping regardless of whether it started in the middle and went this way, or started this way and went that.

Q. These pulleys and so forth on the line shaft, you don't know what speeds they could stand; they

(Testimony of Myron W. Black.)

had never been tested for speed, what they could stand?

A. Only these overspeed tests that had been made by our representative and the insurance representatives both, where they speeded the engines up to above any operating speeds, and the pulleys had always stood those tests.

Q. Up to about 250 revolutions per minute?

A. Well, it is more than that, because we had operated the engine somewhere around 270, and it had withstood that and a little bit more, or it wouldn't have operated without kicking out in normal operation.

Q. Well, those pulleys weren't always at the same condition; sometimes they had some loads on them and sometimes they didn't, isn't that so?

A. Well, in normal operation they're all loaded. In abnormal operation, in case the paper is off the machine or you're washing the machine up or making repairs, certain sections will be down.

Mr. Kelley: I'm sorry, I didn't get that answer.

(Whereupon, the reporter read the answer.)

The Court: That's the load on the pulleys? [212]

A. Yes.

Q. I think before we get the policy in, you had this policy of insurance which covers the number 4 engine and your other engines and paper machines, the main principal parts of the rolls and so forth, but does not cover felts or some of the parts that wear out or break more easily, is that right?

A. That's right.

(Testimony of Myron W. Black.)

Q. And you had no insurance on the line shaft or the line shaft pulleys connected between the paper machines and the engines?

Mr. Kelley: Of course, we're maintaining the damage to the line shaft is a direct result of the damage occurring in the engine. There are various types of insurance. If counsel will indicate what type of underwriting he means, I won't object further. We're maintaining that all the damage here was covered, as a direct result of the engine accident.

Mr. Paine: Well, I want to show they had attached to this engine the uninsured line shaft and the pulleys, which were not covered by insurance covering them only for possible accidental breakage.

Mr. Kelley: Then I'll have the additional objection that Mr. Black is a manager, and not an insurance underwriter, and that calls for expert testimony [213] as to the nature of the question, and also it is a law question for the court.

Mr. Paine: It's merely a question—he's familiar and offered in evidence the insurance policy they offered here; all I'm asking is if they had any insurance on that line shaft, and I think he's in a position to testify.

Mr. Kelley: We've offered the policy; it speaks for itself, and the construction is one for the Court.

The Court: As I understand, he is asking whether they had any other, or had any direct in-

(Testimony of Myron W. Black.)

surance in this company or some other one outside of this policy.

Mr. Kelley: Then we'd get into the question of secondary and primary coverage, and for a third reason the question would be incompetent, irrelevant and immaterial.

The Court: If I understand it, the question goes only to the interest of the witness or possible bias of the witness. It does not concern directly the legal effect of this insurance, isn't that it?

Mr. Paine: That's true.

The Court: I'll overrule the objection, and permit it to come in for that reason.

(Whereupon, the reporter read the last previous question.) [214]

A. That's correct.

Q. (By Mr. Paine): Now, in regard to these recommendations, Exhibits numbers 15, 16 and 17, I show you first number 15; in January the insurance company had recommended to you that you install this safety device to stop the governor in the event that the belt ran off or broke, is that right?

A. That's right.

Q. Prior to that time you had no device of that sort on the governor, and if something happened to the governor belt the governor would permit the engine to speed up; it would no longer have any controlling effect upon the engine, is that right?

A. That's right.

(Testimony of Myron W. Black.)

Q. And that was a common enough occurrence to justify the insistence of putting this device on to prevent that, wasn't it?

A. Let's put that in a different manner, if I may. Before this equipment was put on there, we were dependent upon the overspeed stop stopping the engine in case of a pulley or belt breaking. With a belt breaking here, it's an additional safety.

Q. And I think as that letter points out, the Brownell stops aren't satisfactory and don't operate satisfactorily, and that an additional or independent stop on the [215] governor was felt necessary?

A. Nobody wants to be dependent entirely upon one thing if they can help it.

Q. You get two; and these belts frequently run off the pulleys or break, don't they?

A. Which belts?

Q. The belts from the engine to the governor.

A. They do break.

Q. They do break, wear out and break, is that right? A. They do.

Q. And this was put on there to counteract any effect that that might have if that occurred?

A. That's right.

Q. And you then did put them on sometime in the fall of '45, and I think they were inspected, I think it says "inspected while at rest"; isn't that what the letter says?

Mr. Kelley: Has your Honor had an opportunity to see those exhibits?

The Court: Yes, I've read them.

(Testimony of Myron W. Black.)

Mr. Paine: Well, I think they probably speak for themselves.

The Court: Yes, they speak for themselves.

Q. (By Mr. Paine): Now, Mr. Black, after this affair took place there was quite a bit of discussion amongst you [216] people with the Hartford people as to whether or not the governor safety device had operated to stop the engine, wasn't there?

A. Yes.

Q. And you were making investigations and they were making investigations, and everybody was trying to locate somebody who claimed to have examined it close to the accident, is that right?

Mr. Kelley: I object to the form of the question, "who examined it closed to the accident."

Mr. Paine: Well, who observed it close to the accident, if that's your objection.

The Court: Read the question, will you?

(Whereupon, the reporter read the last previous question.)

The Court: Overrule the objection.

A. You mean close to the time of the accident?

Q. Yes, close to the following of the accident.

A. That's right.

Q. And you learned shortly after the accident that Mr. Beguelin, who testified here today, had observed it in the afternoon after the accident, and had reported that it had tripped and operated?

Mr. Kelley: Now, for the sake of the record, this is improper cross-examination as far as this witness

(Testimony of Myron W. Black.)

was [217] concerned. Mr. Beguelin was here, and he's been cross-examined as to what he knows. This matter wasn't gone into at all with this witness on direct.

Mr. Paine: He's gone into it by putting in evidence this letter which your Honor read, about the only question that was still left open, in August, as to who saw the governor stop and what position it was in.

The Court: Well, I'll overrule the objection.

Mr. Kelley: If it goes to the witness Wheeler I wouldn't have any objection. It doesn't refer to Beguelin.

The Court: Overruled.

Witness: I'd like to have that question, please.

(Whereupon, the reporter read the last previous question.)

A. I don't gather from Mr. Beguelin's testimony that it had tripped and operated. He said that when he saw the Pickering governor it had been tripped. He didn't say how it had been tripped or when it had been tripped.

Q. I think you're correct in that, Mr. Black. I phrased it inadvertently. All he said was that when he saw it it was in tripped condition.

A. That's right.

Q. As to when that tripping occurred or how, of course he didn't know anything but he did know that he did see [218] that and had told you that. That's right, isn't it?

(Testimony of Myron W. Black.)

A. Well, I won't differ with it very much, because we didn't know, and I didn't know, and everybody—as you said, we were looking for facts, and we'll say that the governor at 6 o'clock was tripped; now, when, where and why-for?

Q. That you didn't know, but you had that one fact: Here was a witness that said that at 6 o'clock, or 5 o'clock, sometime that afternoon, the governor was tripped, but you were still looking for somebody, and you finally located Mr. Wheeler, about the latter part of August, when you wrote this letter that Mr. Wheeler said that he had seen it tripped when he came on, or had seen that it had not functioned, and was in a position where it had not closed the valve, at about 2:30 when he came on?

Mr. Kelley: Now, just to clear things up, I object to the disjunctive form of that question. We don't know what he's talking about, the Pickering governor or the butterfly valve.

Mr. Paine: We're talking about the Pickering governor.

Mr. Kelley: Then I think he should state it to witness clearly.

The Court: Do you understand the question?

Witness: No; I'd like to have it read.

The Court: Perhaps you had better reframe it.

Q. (By Mr. Paine): In August, shortly prior to the time you wrote this letter, you then for the first time learned from Mr. Wheeler that he had seen the Pickering governor stop on the governor

(Testimony of Myron W. Black.)

in a position where it hadn't functioned, at about 2:30 in the afternoon of the accident?

A. That's right.

Q. And on that wrote this letter to the effect that that now clears up this question, is that right?

A. That's correct.

Q. Now, had Mr. Janecek at any time prior to your writing of this letter ever told you that he had seen this Pickering stop in a position where it had failed to operate, immediately after the accident?

A. May I get your question? Had he told me that this Pickering governor had been tripped?

Q. Had not been tripped; he testified that when he examined the Pickering governor right after the accident that it had not been tripped.

A. To my knowledge he never told me that, and the attitude of this letter is my attitude.

Q. This was the first information you had that anybody had seen the Pickering governor and could testify as to its condition at an earlier period than Mr. Beguelin had seen it? [220]

A. That's right.

Q. And when, if at all, did Mr. Janecek ever tell you that he had seen it immediately after the accident?

A. Well, he has told me from one time and another that he had seen the governor, but to tell me that he had seen the governor in a tripped condition, no, I don't.

(Testimony of Myron W. Black.)

Q. Well, now, we don't want to misunderstand ourselves. He had seen the governor, but that he hadn't seen it as to whether it had operated or hadn't operated? A. Yes.

Q. That's right? A. That's right.

Q. He never told you up until he testified on the stand the other day that immediately after the accident he examined the governor stop and determined it had not operated at that time?

A. That's right.

Q. So the first news you had of it was the other afternoon in this courtroom? A. That's right.

Q. And when the Hartford people were there in your office with you and Mr. Janecek in August, August 2, I think it was, Mr. McKeon and Mr. Murray and Mr. Fullmer and Mr. Olinger and you were discussing this matter, at that time didn't Mr. Janecek say: "I didn't pay any [221] particular attention to that governor stop"?

A. Well, he may have, but I can't testify one way or the other.

Q. At least, he never spoke up and said he observed that, and it failed to operate, did he?

Mr. Kelley: Well, of course, this is irrelevant and immaterial. So your Honor won't consider that I do even lip service to this sort of cross-examination, I renew my objection.

Mr. Paine: I think I'm entitled to show what Mr. Janecek said at that conference.

The Court: This witness isn't responsible for what Mr. Janecek may have said.

(Testimony of Myron W. Black.)

Mr. Paine: No, but he was present. It may save a lot of time, by putting on four other people to say he kept his month closed and didn't say anything about it, if he says what Mr. Janecek said in that conference.

The Court: As I understand it, he says he doesn't know what Mr. Janecek said.

Witness: I would like to explain my attitude by reading the first paragraph of that letter: "When Mr. McKeon was here there was one question to be answered. That was the condition of the governor after the wreck."

Q. (By Mr. Paine): Yes.

A. And Mr. McKeon was here somewhere, I believe, on the 1st of August. [222]

Q. That's right; it was on the 2nd, at that conference.

A. And that is my recollection, that that was left open at that time, that nobody knew definitely, and then we found Mr. Wheeler that would testify to the fact that it had not been tripped.

Q. But now Mr. Janecek testifies that he did know definitely at that time, and sat in on all of these conferences, and as far as you remember, if he did know that he never gave voice to it to anybody?

Mr. Kelley: I'll object to that as improper cross-examination.

The Court: Well, overrule the objection.

Witness: I can't say that I—I'll come back to this same thing; if he knew that, I'm not aware of him knowing it.

(Testimony of Myron W. Black.)

Q. Did you observe the governor belt or pay any attention to it afterwards, the one that broke?

A. I saw the governor belt lying underneath the governor, and then later after it was brought up for inspection I saw it, and that was cut off.

Q. Was it cut off up in your office, do you remember?

A. Well, it was brought into the office.

Q. It was brought into the office after it was cut off, and do you remember what was done with it then? Did you [223] give it to anybody, or permit anybody to take it?

A. Well, the Hartford representatives had it the last I saw it. That looks very much like the piece that was cut off, except at that time this was a nice clean break with yellow leather; it's darkened; either from the oil absorption or from other contact.

Q. By "this" you meant the broken edge?

A. That's right.

Q. Did you in your investigation contact the various employees to find out if any of them had touched or tampered with the stop on the governor after the accident?

A. Anyone that we thought might have, we asked if they had. The first consideration and policy of the thing was, we had an accident; our first part was to see if anyone was injured. After that was cleared we have to clear ourselves so we can operate. When that's passed we have to repair our damage so we can return to operation. The fixing of the

(Testimony of Myron W. Black.)

responsibility was secondary for the immediate time. The attitude that was sent out was "Leave it alone, leave the wreck alone, around the engine, until the other interested parties, that is, the insurance company, can see for themselves just what has happened." Now, you say that anybody could tamper with it. All the curiosity seekers around there were there. [224] They were instructed to leave it alone, and nobody ever acknowledged that they touched anything.

Q. Were you present when the insurance people of the Hartford conducted some tests on the butterfly valve on the 5th of July?

A. I was present in the mill.

Q. But you weren't down where they were conducting the tests? A. No.

Mr. Paine: I have no more questions.

Redirect Examination

By Mr. Kelley:

Q. Mr. Black, I believe you stated in response to counsel's questioning that the one question that had been left open at the time of a meeting August 2 or August 4, at which you were present and some representatives of the insurance company, was the question "Had the Pickering governor tripped"?

A. That's right; that's the statement in the letter.

Q. And that you made investigation and ascertained that Mr. Wheeler had in fact been present

(Testimony of Myron W. Black.)

and had observed within the space of half an hour after the accident that the Pickering governor had not tripped? A. That's right.

Q. And you notified them immediately?

A. That's right. [225]

Q. At all times did you leave this wreck, as you expressed it, alone until the insurance company could look at it?

A. Well, as the expectations; you'll have to control the whole crew that was around, but the expectation and the orders were leave it alone until it could be inspected.

Q. And did you afford every facility at your command to cooperate with the insurance company in making an investigation of this loss?

A. We tried to do all we could to leave all the evidence in the best position.

Q. And who were the local representatives of the Hartford who investigated the loss at the time? Who was the first man on the scene?

A. As I remember, Mr. Fullmer was.

Q. Mr. F. H. Fullmer?

A. I think so. I may be mistaken.

Q. Is he the Seattle adjuster?

A. He is the Seattle adjuster.

Q. Now, how about Mr. H. C. Olinger; when did he get on the scene?

A. You're asking me something that happened a long time ago. They were there a day or two after it happened.

(Testimony of Myron W. Black.)

Q. They were the first ones there?

A. They were the first ones there.

Q. And did they conduct a thorough investigation? [226]

A. They went through it, I believe, as thoroughly as they knew how.

Q. And how long were they at the plant?

A. Well, off and on for a week or two weeks.

Q. And you permitted them to talk with and interrogate any and all employees that they desired?

A. They had the freedom of the plant.

Q. And after their investigation Mr. Fullmer and Mr. Olinger informed you that the breaking of the governor belt was the proximate cause of the loss and damage to the property?

Mr. Paine: I object to that.

Mr. Kelley: Well, that's preliminary.

The Court: Objection sustained.

Q. (By Mr. Kelley): What, if anything, did Mr. Fullmer and Mr. Olinger tell you as to the proximate cause of the loss?

Mr. Paine: I make the same objection.

The Court: I'll sustain the objection. That necessarily would be an opinion.

Mr. Kelley: Well, your Honor please, it was brought out in cross-examination with reference to these meetings with the representatives of the insurance company, and apparently by some innuendo the inference is sought to be made that cooperation was not had, or [227] that there was some Johnnie-come-lately evidence produced.

(Testimony of Myron W. Black.)

The Court: Well, this giving them the facilities is all right, but not an opinion as to what caused the accident, by some representative of the insurance company.

(Whereupon, letter from Hartford Steam Boiler Inspection and Insurance Company to Inland Empire Paper Company dated October 18, 1946, was marked Plaintiff's Exhibit No. 19 for identification.)

Q. (By Mr. Kelley): Directing your attention to plaintiff's Exhibit 19 for identification, is that a letter that you received on October 18, 1946, from the Hartford Insurance Company?

A. This is a letter addressed to Mr. C. A. Bufton, General Manager, relative to this accident, signed by Mr. Fullmer.

Q. Did it come to your attention?

A. It did.

Q. And was that the first time that—well, I'll offer the letter, first.

Mr. Paine: No objection.

The Court: It will be admitted.

(Whereupon, Plaintiff's Exhibit No. 19 for identification was admitted in evidence.)

(Testimony of Myron W. Black.)

PLAINTIFF'S EXHIBIT 19

The Hartford Steam Boiler Inspection and
Insurance Company, Hartford, Connecticut

Seattle Office

Arctic Building

Seattle 4, Washington

October 18, 1946

E. G. Watson Manager

J. G. Murray Chief Inspection

Inland Empire Paper Company

Millwood, Washington

Attention: C. A. Buckland,
General Manager

Re: Accident to Line Shaft driven by Sumner
Steam Engine No. 4, July 3, 1946.

Gentlemen:

The results of the investigation made into the loss which occurred at your plant on July 3, 1946, have been made the subject of a most careful examination by the Officials of our Company who have reached the conclusion that this damage to property did not result from an accident to the insured engine, but rather came from a source which will be found to be in certain machinery which unfortunately is not described in the policy in effect.

It is true that the insured engine suffered some minor damage in the breaking of the governor belt, but we believe that this was incidental to and caused by the failure of the uninsured machinery and that

(Testimony of Myron W. Black.)

the evidence now brought to light does not bear out an earlier report to the effect that the breaking of the governor belt was the proximate cause of the loss and damage to property.

We regret exceedingly that in view of the circumstances surrounding this case that we are left with no alternative other than to deny liability for the loss arising from this accident.

Yours very truly,

F. H. FULLMER,

Adjuster

FHF:FB

(Received Oct. 19 A.M. Answered.....)

Q. (By Mr. Kelley): And on October 18, 1946, or by that [228] letter of October 18, 1946, was that the first time that you were advised that this insurance company was denying liability for the loss and damage? A. Yes.

Q. Directing your attention again to plaintiff's Exhibit 19, do you have in your possession an earlier report to the effect that the breaking of the governor belt was the proximate cause of the loss and damage to the property?

A. I am not aware of a written report to that effect.

Q. Are you aware of an oral report to that effect? A. Oral discussion, yes.

Mr. Kelley: I think that's all.

(Testimony of Myron W. Black.)

Recross-Examination

By Mr. Paine:

Q. Well, up to the time of this letter the whole matter was in the stage of discussion, and the decision reserved as to whether or not the insurance company would assume this liability, isn't that right? A. Yes, it wasn't discussed.

Q. It was discussed, and no conclusion had been reached until the insurance company finally came to a conclusion and so notified you in October, is that right? A. Yes, that's true.

Q. And your first report to them was that the belt had broken and caused the damage; that was the basis of your [229] report, isn't that right?

A. Yes.

Q. It was your theory that the belt broke and caused the damage, and you so reported to the company, that the belt had broken and caused some damage?

A. And it was not denied by the insurance company, therefore it was a standing report.

Q. The insurance company had not gotten around to denying it, therefore it was a standing report?

Mr. Kelley: They hadn't gotten the bill by that time Mr. Paine.

Mr. Paine: That's all.

(Testimony of Myron W. Black.)

Redirect Examination

By Mr. Kelley:

Q. On that point, of the damage, did your company, with the knowledge and consent of the defendant Hartford Insurance Company, call in the Union Iron Works of Spokane to repair the damage?

A. That's right.

Mr. Paine: It seems to me that's immaterial, your Honor.

The Court: I think so. It wouldn't be contended that's a waiver of the right to deny liability, certainly, and the amount is not controverted. I'll sustain the objection.

Mr. Kelley: If your Honor pleases, this fact is admitted [230] by the defendants, I am sure, of paragraph 6 of our complaint, but they seek to admit it without prejudice, as they call it. Now, whether or no it is without prejudice is a legal question for the Court, and I do offer to prove by this witness, if permitted to testify, that he called in the Union Iron Works of Spokane with the knowledge, consent and approval of the defendant Hartford Insurance Company, and that the situation was appraised by the representatives of the Union Iron Works of Spokane, and that with the knowledge, consent and approval of the defendant Hartford Insurance Company the Union Iron Works of Spokane was given an order to make castings and line shaft bearings and other work that was necessary to the equipment under the circum-

stances, and that this was all done with the knowledge, consent and approval of the defendant, who had previously by oral announcements of its representatives Fullmer and Olinger advised this witness that the proximate cause of the damage and loss to the property in question was from the breaking of the governor belt, which fact is further confirmed by the letter in evidence from the defendant Hartford Insurance Company under date of October 18, 1946. That's the formal offer of proof, for the record.

Mr. Paine: I object to it, your Honor. [231]

The Court: The objection will be sustained.

Mr. Kelley: No further questions.

(Whereupon, there being no further questions, the witness was excused.)

The Court: Do you have any further testimony?

Mr. Kelley: Yes, I have one further witness.

The Court: Well, we'll recess for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

HARRY J. MacCAMY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Your name is Harry J. MacCamy?

A. Yes, sir.

(Testimony of Harry J. MacCamy.)

Q. Whereabouts do you live, Mr. MacCamy?

A. 2124 West Maxwell, Spokane.

Q. How long have you lived in Spokane?

A. Oh, about 55 or 56 years.

Q. What is your occupation?

A. I am chief engineer and assistant manager for the Union Iron Works.

Q. Where is the Union Iron Works located?

A. The address is 217 East Montgomery avenue.

Q. In Spokane, Washington? [232]

A. Spokane, Washington.

Q. What are the products of the Union Iron Works?

A. Oh, a general line of mining and sawmill machinery, transmission machinery, shafting, pulleys. We do tank work and pipe work. We have a foundry.

Q. How many men do you employ?

A. Oh, approximately 170 or 180.

Q. Of what does your plant consist?

A. Well, we have a machine shop, a foundry, a forge shop, a boiler shop, a pattern shop, ornamental shop, plate shop.

Q. Are you duly licensed to practice as an engineer in the State of Washington? A. Yes, sir.

Q. As to what type of engineer?

A. Both mechanical and structure.

Q. To what engineering societies do you belong?

A. I belong to the American Society of Mechanical Engineers.

(Testimony of Harry J. MacCamy.)

Q. By the way, how long have you been a member of that? A. I think since 1921.

Q. Of what technical school are you a graduate?

A. I'm not a graduate of a technical school. I got my mechanical education through a mechanical engineering course in the International Correspondence School.

Q. What has been your practical experience in engineering? [233]

A. Well, I served a full apprenticeship as a machinist, worked as a journeyman machinist, have had responsible charge of design and general engineering line in our company for the past twenty years.

Q. In that connection, you've had the design of various types of mechanical machinery?

A. Yes, sir.

Q. And transmission machinery?

A. Yes, sir.

Q. And mining machinery? A. Yes, sir.

Q. Mill machinery? A. Yes, sir.

Q. By the way, your company has done work for the Inland Empire Paper Company?

A. Yes, sir.

Q. Did your company assist in the repair of the machinery, the paper machine, the line shaft, and the Sumner steam engine, in the case at bar?

A. Yes, we did.

Q. Just generally, without going unnecessarily into details, what form did your assistance take?

(Testimony of Harry J. MacCamy.)

A. We furnished the line shafting, made the new pulleys, new bearings, sole plates, couplings, and so forth.

Q. You personally have been at the premises of the Inland Empire Paper Company [234] before the accident of July 3, 1946?

A. Yes, sir, many times.

Q. Can you indicate to the Court approximately the degree of your familiarity with the premises and the machinery contained therein?

A. Well, we've done business with the Inland Empire Paper Company for a good many years. I've had occasion to go out there on numerous occasions, and have been, I would daresay, in every part of the plant.

Q. Are you familiar with that Sumner steam engine as shown on Exhibit 8, I believe?

A. In a general way, yes, sir.

Q. And you're familiar with the Pickering governor shown on that same machine there in plaintiff's Exhibit 8?

A. In the same general way, yes.

Q. And you're familiar in a general way with the Brownell overspeed stop as shown, at least partially, in plaintiff's Exhibit 11 and 8 also?

A. Yes, sir.

Q. And you have been in court and heard the testimony the past two days?

A. Yes, sir.

Q. You've been here the entire time, I take it?

A. Yes, sir.

(Testimony of Harry J. MacCamy.)

Q. Well, Mr. MacCamy, without going into all of that testimony, [235] if I can call to your attention a portion of it, at least, assuming the Sumner steam engine as shown on plaintiff's exhibit 8, with a total number of two cylinders, and I believe a rating, a cylinder size, of twelve inches, connected to a main line shaft of approximately 139 or 140 feet, as shown in plaintiff's exhibits 3 and 4, and the Sumner steam engine being connected by a 22-inch rubber belt of an approximate length of 20 foot, centers, that is, from the center of the engine shafting to the center of the main line shafting, and the main line shaft in turn being connected by vertical belting as shown in exhibits 3 and 4 to a portion of the number 4 paper making machine on the first floor, as set forth in exhibit 1, that picture you see on the top end of the easel there, and further assuming that a Pickering governor on the Sumner steam engine was set to maintain a paper speed of 346 feet per minute, and the Brownell over-speed stop was set to permit a paper speed of approximately 700 feet, and further assuming a sudden speed-up in the engine and the main line shaft and the number 4 paper machine to have occurred, which tossed the pulp going through the number 4 paper machine at varying heights estimated by different witnesses as from 3 to 5 feet above the couch roll of the number 4 paper machine, as shown by exhibits 1 and 5, with an [236] attendant speeding up of the machinery, which twisted the basement

(Testimony of Harry J. MacCamy.)

line shaft of that number 4 paper machine from one end to the other, with the result that all couplings on the line shaft were damaged, and the pulleys on the line shaft were all broken, and with the further damage that the bearings supporting this line shaft were damaged, and the tops of two concrete piers supporting the line shaft were broken, and that two driven—well, at least, from the evidence, at least one driven pulley as shown in exhibit 7 on the main floor above this basement line was also broken, and that in addition the belts in the varying sections were also broken, and the whole thing was described by the witness Black as a mess, what in your opinion produced such damage?

A. Well, I would say the overspeeding of the engine.

Q. The run-away speed of the engine?

A. Yes.

Q. By the engine you mean the Sumner steam engine?

A. Yes, sir.

Q. What in your opinion must have happened to the control devices on this engine to have produced such damage?

A. In my opinion they could not have functioned.

Q. By the way, are you familiar with the location of the trigger which operates the Brownell over-speed stop as shown in Exhibit 11? [237]

A. I'm familiar as the testimony described the location. I've seen it, but I don't know exactly where it is.

(Testimony of Harry J. MacCamy.)

Q. Then aside from your personal examination, assuming, then, that the trigger of the Brownell overspeed stop was tripped, was found, at least, in a tripped position after the accident, what could have caused this?

A. Well, in my opinion the loosening of the main drive belt and being more or less unrestrained sideways, it could have hit the trigger, or other flying debris could have hit the trigger.

Q. What do you know regarding the sensitivity of this trigger? A. Nothing, personally.

Q. I see. In your opinion—well, I'll withdraw that. You may inquire.

Cross-Examination

By Mr. Paine:

Q. Well, Mr. MacCamy, what you originally assumed there was if the engine overspeeded and the paper machine overspeeded and the line shafting overspeeded, and the materials got broken on it, it was caused by the overspeed of the engine, isn't that right? A. Yes.

Q. Well, that was given to you in your assumption, wasn't it?

A. As I understand it, that was on the assumption that [238] that's what happened.

Q. On the assumption that it overspeeded, you assumed the cause of the damage was overspeeding?

A. Well, I assumed the damage was caused by overspeeding, because the engine is tied directly to the line shaft, the line shaft to the machine; the

(Testimony of Harry J. MacCamy.)

machine or the line shaft couldn't cause overspeeding. If there was overspeeding, the overspeeding must have come from the engine.

Q. That's right, if there was overspeeding, the overspeeding must have come from the engine. Now, in regard to the Brownell stop on the wheel, did you ever hear of them being set off by a piece of belt-ing hitting them at the end of a sequence of events like this?

A. No, I can't say that I have. I said it was possible.

Q. Well, if it is possible, in your opinion it's highly improbable?

A. Well, no, I wouldn't say it was highly improbable, because in my opinion the belt undoubtedly was moving around some.

Q. The belt was moving around some, and this object that it's got to go down here to hit is a pretty small object, isn't it? Just come down here and look at exhibit 11, and tell me what it is the belt has to hit to set this device off. [239]

A. I think it has to hit this little trigger here.

Q. That's the little trigger in about the center?

The Court: Shouldn't that be marked some way?

Mr. Paine: Well, it is the trigger right in the center of picture 11.

Mr. Kelley: I wonder if we could mark that with the letter "T" right underneath it? May I ask the Court's permission to have that marked "T"?

The Court: Yes, all right.

(Testimony of Harry J. MacCamy.)

Mr. Paine: I'm not a very good penman, but maybe I can do it. The "T" with an arrow points to the little trigger device in the center of exhibit 11.

Mr. Kelley: While you have your pen out there, Mr. Paine could you mark the main engine pulley too? Just write the name "pulley" there.

The Court: Who is testifying here, now?

Mr. Paine: Mr. MacCamy.

Q. (By Mr. Paine): What do you want to put on there, "EP" for engine pulley? Which pulley is this, Mr. MacCamy?

A. That's the engine pulley.

Q. Now, when this stop operates without the belt hitting it, what would be evident on it?

A. What is that question again?

Q. When the stop operates without the intervention of some outside influence, such as this belt flying around. [240]

A. This pin goes out through centrifugal force and contacts this trip.

Q. And you don't know whether the pin was out or the pin was in; you haven't been asked to assume anything in regard to that? A. No, I haven't.

Q. All you were asked to assume was whether or not it was possible for a belt or some other object to fly over and hit this trigger?

A. That's as I understood the question.

Q. And that calls for no expert knowledge on anybody's part, does it? It's a mere question of here is something standing out in the air, a question

(Testimony of Harry J. MacCamy.)

anybody could determine, whether or not some other object could hit it?

A. Well, I think a person would have to have some knowledge of the action of the trigger in order to know whether the belt could have possibly tripped it or not. In other words, I don't think you could have asked somebody that didn't even know what the trigger was.

Q. Would it be possible, even if that trigger were tripped, that with the matter that was flying around in this building at the time of the accident, that any effect of the tripping of that trigger would not be carried up to the butterfly weight, if the chain were involved in anything? [241]

A. I didn't get that question.

Q. Would it be possible, under the conditions that existed—this occurred, as you understand, at about the end of the breaking of all this line shafting, even if the trigger were hit by the belt when it came off, the belt might also land on and keep the chain taut, to the butterfly valve, might it not?

A. Well, as I understand the testimony, I don't think there's room for the belt to get very much further away from the pulley. I don't think it could get far enough to hit the chain.

Q. Well, the chain hooks on right here, doesn't it? The chain is right below the trigger?

A. Yes, but it's in behind this arm. It's possible.

Q. Well, there again, it's possible that this belt hit this trigger without operating the butterfly valve, isn't it? A. That could happen, yes.

(Testimony of Harry J. MacCamy.)

Q. And if the butterfly valve failed to operate, failed to slow the machine down, and was found on tests right afterwards to fail to stop the machine and keep it from running away, and if when the employees pulled the hand pull on the butterfly valve no stopping of the engine had occurred, and if the steam was not shut off, the only device that could slow this machine down and bring it to a stop would be the stop on the Pickering governor valve, is that right? [242]

A. If the butterfly valve didn't close?

Q. Yes, assuming the butterfly valve didn't close sufficiently to stop the engine, and the steam wasn't shut off, then the only device that could stop it would be the device on the Pickering governor?

A. The automatic trip on the Pickering governor.

Q. The automatic trip on the Pickering governor valve would be the device that would stop the engine, is that right?

A. If the butterfly valve didn't close.

Q. If the butterfly valve didn't close tight enough to stop this engine, the only other device that could stop it would be the Pickering governor device?

A. I understood from the testimony that the engine was practically stopped, it was idling.

Q. When?

A. It was just turning, due to the leakage of the steam through the butterfly valve.

(Testimony of Harry J. MacCamy.)

Q. Well, the leaking of steam might come through the Pickering valve stop, too?

A. If it had functioned I don't think it would have.

Q. You think it would have brought it down to an idling speed?

A. Yes, I think it would stop this engine.

Q. They had it set for idling speeds, and if it was set for [243] idling speeds, it would bring it down to idling speeds?

Mr. Kelley: Would your Honor direct counsel to state what he means by "it"?

Q. (By Mr. Paine): The Pickering governor stop; you can set that to either bring it down to an idling speed or bring it down to a full stop, couldn't you?

A. I didn't think you could do that to the automatic stop. You can adjust the Pickering governor so that it controls the speed within a certain range, but if the belt breaks on the governor and the automatic stop functions, it closes the valve on the Pickering governor and shuts off the steam from the engine.

Q. And if there's any leak from that valve it would escape through?

A. In the Pickering valve?

Q. Yes.

A. I doubt if there would be enough to turn the engine over.

Q. Even to keep it idling?

(Testimony of Harry J. MacCamy.)

A. Not even to keep it idling, through that valve. There might be enough leak through the butterfly to keep the engine operating.

Q. Now, if the first pulley, far out on the end of this line shaft, broke and released that line shaft, would you have a twisting effect if the line shaft was still [244] connected down to the engine?

A. If one pulley broke on the line shaft?

Q. Yes, the pulley on the shaft at the far end broke, and you'd have a twisting, turning effect that came on down?

A. Well, you'd have some agitation. I don't know who could say how much effect it would have to throw the line shaft out of balance.

Q. If the line shaft got out of balance, that would have a tendency to twist and turn and throw the pulleys off, slapping them around?

A. I wouldn't say how much tendency it would have; it would depend a good deal on the speed of the line shaft. The faster the shaft is going the more the effect would be.

Q. Were there any of those pulleys there that should have stood the same strain as the flywheel of the engine took?

Mr. Kelley: I wonder if counsel could fix the speed of the flywheel of the engine which he has in mind?

Mr. Paine: Well, the same speed, before breaking up.

Mr. Kelley: Now, again, I ask counsel to indicate the speed of the engine pulley that he has in mind.

(Testimony of Harry J. MacCamy.)

Mr. Paine: Well, it is a purely comparative speed, the speed of the pulleys, whether they were strong enough to stand the same over-speed that the flywheel was. [245]

Mr. Kelley: Well, again I must ask the Court to direct counsel to put a hypothetical speed.

The Court: I think he has a right to ask the witness to make a comparison, whether the line shaft pulleys can stand as much as the engine pulley, if he knows.

Mr. Kelley: He couldn't know, without that information.

Mr. Paine: Well, I think Mr. MacCamy understands.

Witness: Yes; I'm just waiting for the Judge to tell me whether to answer it or not.

The Court: Yes, you may answer it if you can.

Witness: The only way I could answer it is to say that it's considered common practice to limit the speed of split pulleys to a lower speed than for solid pulleys, and a split pulley is a split pulley. If the pulleys on the line shaft were properly designed, which I presume they were, and the pulley on the engine was properly designed, I would say that they should both stand approximately the same rim speed.

Q. And where you find that there's no damage to the engine flywheel, or a portion of the engine stood the overspeed without any trouble to it, and when the line shafting, pulleys, and so forth were broken, what would you say as to whether they were

(Testimony of Harry J. MacCamy.)

operated, or rather, the engine was [246] operated, at a dangerous overspeed for the engine?

Mr. Kelley: I object to that question, because the question does not embody what engine speed counsel has in mind.

Mr. Paine: I'm not interested in the actual speed. It's from those effects; the engine was operating without any damage to it.

The Court: Overrule the objection.

(Whereupon, the reporter read the last previous question.)

Mr. Kelley: And at what time, if your Honor please; these prior tests conducted by the insurance company, or at the time of the accident?

The Court: I think the time of the accident is implied.

Mr. Paine: Yes; you never broke any of the line pulleys testing them.

Witness: I don't know now what you want me to answer; whether the engine pulleys and the line shaft pulleys were traveling at the same speed at the time of the accident?

Q. Well, what I'm getting at is whether the engine was operating within the proper limits of safety, as far as the engine was concerned, at the time.

A. Well, I'd answer that question no. [247]

Q. Why?

A. Well, because I don't think the speed at which the machine had been tested before, as a mat-

(Testimony of Harry J. MacCamy.)

ter of fact, was a critical speed for either the pulleys on the line shaft or the engine.

Q. Well, they had never been tested to the point where anything was allowed to break, you mean?

A. No, but it had been tested to the point where the overspeed stop functioned.

Q. What I'm getting at is from this occurrence itself there was no evidence of overspeed to the engine, the engine wasn't damaged; it would indicate, would it not, that it hadn't exceeded in any way the safe limits of its operation?

A. It would seem that way.

Q. You might have 'most anything attached to the engine, that, put on there, started going at a hundred revolutions a minute, might break it, if it were a weak sister, or something, without any improper overspeeding of the engine as far as the engine itself is concerned?

A. Yes, I think that's true.

Q. And since some of these pulleys were designed to stand a strain as great as the flywheel of the engine, and yet they were broken up, it would look as though that were due to the twisting and turning of the line shaft, and [248] knocking the pulleys around, rather than through disintegration through centrifugal force, wouldn't it?

A. I don't think that question could be answered. I don't see how anybody could tell what caused the pulleys to break.

Q. If you've got two objects, both of which are built to stand the same speed, and this one does not

(Testimony of Harry J. MacCamy.)

break, and this one does break, isn't it logical to assume it is from the twisting of the line shaft and breaking up, rather than from the centrifugal force?

Mr. Kelley: The witness has answered the question.

The Court: Overrule the objection.

A. (Witness): I still think it was due to the excessive speed, that caused the pulleys on the line shaft to break.

Q. You never have conducted any tests on any of this equipment or examined it personally?

A. No.

Q. It's just a purely hypothetical review of the matter? A. That's all.

Q. If the stop on the governor was adjusted to permit the engine to idle, rather than to come to a sudden and complete and jolting stop, then you wouldn't know whether it was that device or the butterfly device that brought the machine down to idling, would you? [249]

A. If they both operated, do you mean?

Q. You wouldn't know which one had operated if the governor stop device was fashioned to permit the engine to come down to an idling speed rather than a complete stop?

A. If it was equipped that way, I wouldn't know.

Q. And it's possible and often customary to equip them that way, rather than slam the engine off to a complete stop, isn't it? A. It may be.

(Testimony of Harry J. MacCamy.)

Q. I mean mechanically, and so forth, it is possible and feasible and proper? A. Yes.

Q. And you don't know what the condition of the automatic stop on the governor was at the Inland Empire Paper Company plant? A. No.

Mr. Paine: I think that's all.

Redirect Examination

By Mr. Kelley:

Q. Mr. MacCamy, would an engine speed of 270 R.P.M., if that is the setting of the Brownell over-speed stop, to permit a paper speed of approximately 700 feet, have been safe for the pulleys on the line shaft? A. In my opinion, yes.

Q. Would an engine speed, say, of 350 R.P.M. have been safe [250] for pulleys on this line shaft?

A. If I understand the size of the pulleys, yes. I believe that would maintain a rim speed on the split pulleys of somewhere around 4800 feet a minute.

Q. In your opinion, would the pulleys on this line shaft have exploded if the control devices of the engine had functioned?

Mr. Paine: Now, I object to that as improper. If the engine had stopped it wouldn't have exploded at that time.

The Court: I'll overrule the objection.

(Whereupon, the reporter read the last previous question.)

Mr. Paine: I think he ought to specify which control devices he's talking about.

(Testimony of Harry J. MacCamy.)

Mr. Kelley: I'll put that question, if your Honor pleases, first.

A. I don't think they would, no.

Q. Now, if the Pickering governor control devices had functioned before any of these pulleys reached their critical rim speed, would they have exploded?

A. Not if the governor had stopped it before they reached their critical speed.

Mr. Kelley: That's all. [251]

Recross-Examination

By Mr. Paine:

Q. If it had stopped before they got to the critical point they wouldn't have broken, is that right? A. That's right.

Q. This overspeed is caused by, may be caused by a number of things getting wrong with the governor, isn't that right?

A. Getting wrong with the controls of the engine.

Q. The breaking of the governor belt from the engine to the governor is only one of many things that might set off an overspeed condition, isn't that so?

A. Well, the failure of the governing devices would cause an overspeed condition.

Q. But those can take place without the breaking of the governor belt; that's just one of the things that might happen and cause the overspeed?

A. Oh, yes.

(Testimony of Harry J. MacCamy.)

Q. And if the overspeed had taken place due to the failure of some other portion of the device, and then as the overspeed developed, the governor belt broke, that would set off the trip device and turn off the machine?

Mr. Kelley: I object; there's no evidence of that in the record. Secondly, if it is shown to be a hypothetical question, the proper foundation has not been laid. [252]

(Whereupon, the reporter read the last previous question.)

Q. Then the breaking of the belt would not have been the cause of the overspeed, would it?

Mr. Kelley: He certainly has the vices he accuses me of.

Q. (By Mr. Paine): No, the question is, if something else goes wrong in the governing mechanism, other than the breaking of the belt.

A. I think that's true.

Q. And nobody having seen what took place there, nobody knows when the governor belt broke, whether first, middle, or last, do they?

A. Well, am I supposed to answer that according to the testimony?

Q. Well, maybe that is involving the testimony. That you wouldn't know.

A. As I understood the testimony somebody testified that they saw the automatic stop on the governor immediately after the accident and it had not acted.

(Testimony of Harry J. MacCamy.)

Q. Yes, there's some testimony that they had seen the stop after the accident.

The Court: I think we'd better start again.

Mr. Kelley: Your Honor understands my apparently haphazard failure to protect the record is due, in part, [253] to the absence of a jury?

The Court: Yes, I understand that.

Q. (By Mr. Paine): What I'm getting at, nobody was present and saw the belt break?

A. Not to my knowledge.

Q. And assuming that is correct, the overspeed might have occurred from another defect in the governor, and the belt may have broken after the overspeed was present, whether it tripped the operating device or didn't trip it?

A. That may be possible.

Mr. Paine: I think that's all.

The Court: Is that all, Mr. Kelley?

Mr. Kelley: That's all.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Paine: I'm going to suggest, your Honor please, I might be able to save quite a bit of time; there's been a great deal of evidence come in today that's rather cumulative of evidence I was prepared to put in. I think we can finish our evidence by two or three o'clock tomorrow. A great deal of what I thought might be necessary I think has been eliminated by the testimony of Mr. Kelley's witnesses, and I think if I could check with them I could eliminate a good deal of [254] that.

The Court: Well, Mr. Kelley hasn't rested yet.

Mr. Paine: Oh, pardon me; he told me he had one more witness.

The Court: I expected he would rest, but he hasn't yet.

Mr. Paine: Well, he told me this was his last witness.

Mr. Kelley: I believe all the exhibits from 1 to 19 have been admitted, your Honor?

The Court: I haven't checked back over my notes, but that's my impression. Is that correct?

The Clerk: That's correct, yes, sir.

Mr. Kelley: 1 to 19 inclusive, excepting 12.

The Court: Well, all of the plaintiff's identifications have been admitted.

Mr. Kelley: Well, the plaintiff rests, then. Your Honor, I don't want to impose upon the Court or counsel. As your Honor will observe, Mr. Edge has been after me. We have a jury case set for Monday morning, and if counsel is in a position to make his opening statement, I would like at least to have that.

Mr. Paine: Well, the plaintiff having rested, comes now the defendant at this time and moves the Court for a non-suit or for a judgment in its favor on the [255] ground that the plaintiff has failed to sustain the burden of proof to show that they are entitled to recover under this policy, in that they failed to show that the damage they're seeking to recover here was directly caused by any accidental

breaking of any portion of an insured object directly under the terms of the policy. I thought possibly, this being a non-jury case, that it might be preferable to reserve your Honor's ruling on that motion, put it in for the sake of the record and argue it in full when all of the testimony is in, but I don't know just what your Honor's position in that regard would be. I would like to argue fairly extensively when we argue the entire matter, if it would be convenient to do it that way. If you feel it should be argued before we put in our case, I'd want an hour or two to argue it.

The Court: Well, I see no necessity in a non-jury case having two extensive arguments here. If there's no objection, I'll take the motion under advisement until the evidence is all in, and you can argue the whole thing out at once. I might say that it's been my policy not to grant motions for non suit at the close of the plaintiff's case unless there's a clear failure of proof, because I think it is advantageous, when a case is appealed, that it be appealed only once rather than twice [256] and the Circuit Court of Appeals has, I think, indicated if there is any doubt about it, they prefer to have the whole of the record, and both sides of it, when it comes up there, and for that reason I would be inclined to deny your motion, I'll say frankly, if there was any evidence at all to sustain the plaintiff's claim, but I see no reason why I shouldn't take the motion under advisement. Have you any objection to that, Mr. Kelley?

Mr. Kelley: No; I neither affirm nor disaffirm.

The Court: I won't ask you to do so. Then I'll take your motion under advisement. We'll have one argument, then, not two, however, at the conclusion of the case.

Mr. Paine: That was my thought, but I did want to make an argument based upon the evidence as a whole, and the evidence as introduced, and the burden that was upon the plaintiff to sustain.

Mr. Kelley: Your Honor understands our position, that the motion, if made now or at any time, should be peremptorily denied?

The Court: Yes, I understand you're resisting the motion. Are you ready to proceed with the opening statement?

Mr. Paine: Yes. The opening statement will be brief. I think your Honor is fairly familiar with the general facts and circumstances. We have testimony to introduce by Mr. Olinger, Mr. Fullmer, Mr. McKeon and Mr. Vandereb of conditions that they ascertained when they went to the plant on the 5th of July, after the accident, when Mr. Olinger went there, the tests he made on the Pickering governor stop with Mr. Janecek, which has really been covered already, that governor stop operated four or five times without any interference; that later when Mr. Fullmer arrived the tests were made upon the butterfly valve, the machine was put in operation, and the result of those tests showed the butterfly valve failed to stop the machine, the machine ran away and had to be stopped by the application of

the throttle; the valve was disassembled and examined and found to be in poor condition, and unable to completely close or shut off the steam. There will be some contradictory testimony, or some testimony, which I say I think I can eliminate a good deal of, in regard to these conversations between Mr. Black and Mr. Janecek and what was said by the people there; then testimony by an expert witness in regard to the operation of these types of steam engines, and the causes of overspeed, what must have caused the overspeed, what must have caused the engine to stop, and conclusions from that that the mere breaking of this governor belt occurred not at the [258] inception of this chain of events but was one of the concluding events, and actually brought the stop into operation and stopped the engine. There will be legal questions involved as to the question of the proximate cause; was the breaking of the governor belt, if it occurred at the beginning, or was it the intervening causes after the failure of the governor stop, and for whose failure we would not be responsible; but our testimony will be, as I see it now, quite brief, and I think we can be through by the middle of tomorrow afternoon with it.

The Court: Very well, then. The Court will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 4:15 o'clock p.m., the Court took a recess in this cause until Thursday, October 9, 1947, at 10 o'clock a.m.)

Spokane, Washington, October 9, 1947

10 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

HARRY L. OLINGER

called as a witness on behalf of the defendent, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paine:

Q. Will you state your name to the Court?

A. Harry L. Olinger. [259]

Q. And where do you live, Mr. Olinger?

A. 1124 East 16th, Spokane.

Q. And where are you employed?

A. By the Hartford Steam Boiler Inspection and Insurance Company.

Q. In what capacity?

A. As an inspector.

Q. Inspector? A. Inspector, yes.

Q. How long have you been with the Hartford Steam Boiler Insurance Company?

A. Since 1943.

Q. And what was the type of your employment and previous experience before going to them? A. I beg your pardon?

Q. What was the type of your employment and previous experience before going to them?

A. Well, I worked as an inspector for a short time with another company, and stationary engineering, and machinist.

(Testimony of Harry L. Olinger.)

Q. Have you worked with various companies here in Spokane as a stationary engineer and machinist?

A. Yes, I have. I worked for the Golden Age Brewery as an operating engineer, and the Continental Baking Company in the same capacity, and the Davenport Hotel as an [260] operating engineer, and also for the Great Northern Railway Company as a machinist.

Q. When did you first inspect or become familiar with the Inland Empire Paper Company's plant?

A. Well, I think I was out to their plant sometime in 1943, my first visit there.

Q. In what capacity?

A. As an inspector.

Q. For the Hartford? A. That's right.

Q. Now, did you in the spring of 1945 or early winter of 1945 make any recommendations to them in regard to the installation of an automatic safety stop on the governor?

A. Of number 4 engine?

Q. Yes, of the number 4 engine.

A. Yes, I did.

Q. What was your recommendation?

A. Well, I recommended that the Pickering governor be equipped with some kind of a device to shut the steam off or close the governor valve in case the belt should break or run off.

Q. Why was that done?

(Testimony of Harry L. Olinger.)

A. Well, usually this type of governor has such a device on it, and this one didn't.

Q. Well, is it or isn't it a fairly common occurrence for [261] the belt to break or run off?

A. Well, that's a very common occurrence.

Q. And were your recommendations complied with? A. Yes, they were.

Q. And did you inspect the device after it was installed?

A. Yes, I believe I was out there after that was put on, shortly.

Q. And was it at that time in good operating condition, or otherwise?

A. It appeared to be.

Q. Now, had you previously inspected the plant, and if so, about how often were your inspections?

A. Well, we usually make two inspections a year on objects, engines, of this kind.

Q. When was the last one that you made prior to this occurrence?

Mr. Kelley: Prior to what?

Q. Prior to the occurrence on July 3.

A. Well, as I recall, that was in December, 1945.

Q. There's some testimony, I think, Mr. Olinger, that you had overspeeded the engine, number 4 engine, in testing the butterfly valve; and what are the facts in regard to that?

A. I never overspeeded this particular engine myself.

(Testimony of Harry L. Olinger.)

Q. What sort of inspection did you make of the butterfly [262] valve?

Mr. Kelley: At what time, if your Honor pleases?

Q. In December of '45.

A. Well, as I recall, it was a Sunday that I was out there, a time when the engine was down, and we took the belt off and just tripped it manually.

Q. No, I'm talking about the butterfly.

A. Oh, the butterfly stop; I never tested that; I never overspeeded the engine.

Q. Did you look at it to see whether the proper chains were connected to it? A. Oh, yes.

Q. The weight was on it, and the valves would close if they were released?

A. I've examined that part of it.

Q. Now, getting down to the time of this occurrence that's involved here, when did you first learn of it? A. The third—no, the fourth of July.

Q. The fourth of July; and how did you hear of it at that time?

A. Well, they called me from the Seattle office.

Q. Said that something had happened?

A. Something had happened out there, and they wasn't quite sure what took place.

Q. Go out and take a look at it? [263]

A. That's right.

Q. When did you get out to the plant, then?

A. On the 5th.

Q. And about what time?

(Testimony of Harry L. Olinger.)

A. Oh, that was about—oh, somewhere around between 2 o'clock and 2:30, I'd say.

Q. And where did you go to report, or come in contact with any official of the plant?

A. Well, there was no one in the office at that time, so I immediately went down to the engine room in the basement.

Q. And who was down there?

A. Well, there was a lot of people down there, but I remember seeing Mr. Janecek.

Mr. Kelley: Will you keep your voice up, please?

A. Did you hear that?

Mr. Kelley: I heard the cough, yes, sir.

Q. (By Mr. Paine): Speak up, Harry. We're all a little deaf here. If you shout too much the Judge will stop you.

A. Mr. Janecek was really the only person that I noticed, although there were a lot of other people down there.

Q. That's Mr. Janecek, the superintendent, who has already testified?

A. The superintendent of the paper mill, yes, sir.

Q. What did you do then, after you had seen Mr. Janecek?

A. Well, naturally, the first thing I wanted to take a look [264] at was the safety stops on the engine, to see whether or not they had functioned. I found that they both had tripped.

(Testimony of Harry L. Olinger.)

Q. Now, which one did you go to first?

A. Well, you can pretty near look at both of them at the same time.

Q. They're fairly close together?

A. They're pretty close together, but I think I looked at the Pickering stop first.

Q. And you say—what was its condition?

A. It had been tripped.

Q. What did you do in connection with it, you and Mr. Janecek?

A. Well, I looked at it, you might say, by myself first. Mr. Janecek was standing close by, so I called to him and he came over and we started in to test this thing by hand, re-set it, hold the idler pulley up in position.

Q. Now, when you say test it by hand, you mean that you hold this idler pulley up by your hand instead of its being held up by the belt?

A. That's right.

Q. And then what do you do while you're standing there holding the idler pulley up?

A. Well, you let this idler pulley fall by its own weight.

Q. If you just take your hand away from it, what does it do? [265]

A. Gravity pulls it down.

Q. And is that the same effect it has when the belt is removed from it? A. I think so.

Q. And what happened when you did that?

A. Well, that releases the ratchet coil and lets the spring unwind and place the valve in a closed position.

(Testimony of Harry L. Olinger.)

Q. Did it do that? A. Yes, it did.

Q. About how many times did you and Mr. Janecek operate it?

A. Oh, three, four, five, six times, something like that.

The Court: What time was this? I didn't get that; what was the time?

A. Well, I arrived at the plant that afternoon somewhere between 2 and 2:30.

The Court: That's the 5th of July?

A. That's the 5th of July, in the afternoon.

Q. (By Mr. Paine): Well, you tried it four or five times, you say?

A. Something like that.

Q. And what did it do each time? Did it fail any time? A. It tripped out every time.

Q. It tripped out every time; then what examination did you make of the Brownell butterfly top, or the butterfly stop? [266]

A. Well, we re-set that, and then we had—I don't remember who it was, that went upstairs and pulled this pin.

Q. Somebody went upstairs and pulled the pin?

A. The trip cord on this pin.

Q. And what was the effect of that?

A. Well, that let the butterfly valve, the weight on the butterfly valve, apparently in a closed position.

Q. You didn't, of course, go inside of the butterfly valve; all you could see was what happened on the outside?

(Testimony of Harry L. Olinger.)

A. All you could see was from the outside.

Q. Now, did you take a look at the Brownell trigger mechanism?

A. Yes, we looked at that.

Q. And what condition was that in?

A. Well, it looked all right.

Q. I mean, was the trigger—had it operated? Was it up, or down, this little trigger down here, shown on exhibit 11, had it been in an operated condition? A. Well, yes, it had.

Q. Now, what was the general appearance of the place at that time?

A. Well, there was a lot of confusion around there, as I recall; there was a lot of men down there working, and there was parts of pulleys and line shafting around there; I guess some of it was removed by that time. [267]

Q. There had been some cleaning up done?

A. That's right.

Q. What did Mr. Janeczek say to you, if anything, when you and he were inspecting the Pickering stop, as to whether or not it had or hadn't worked, after the accident?

A. Well, of course I can't recall all the conversation that took place, but I do remember asking him who saw that thing first, and he told me that he did. I asked him what he saw, if he saw this thing was tripped. Well, he said he was so busy that he didn't have much time to look at that; a lot of things on his mind.

(Testimony of Harry L. Olinger.)

Q. Made no claim to you at that time that he had discovered it hadn't tripped, right after the accident? A. No, he didn't.

Q. Did you examine the engine itself, the number 4 engine?

A. Well, after we set these stops and tried those, why, I kind of took a general look around there at the wreckage, and went upstairs. I heard there was some damage upstairs. I went up there, just kind of surveyed the thing in general.

Q. Well, I mean did you give any particular attention to the engine and the wheel of the engine as to any evidence of damage or overspeeding to the driving wheel of the engine?

A. Well, as I recall, not at that particular time. I did [268] later.

Q. You did later; what did you discover, if anything, in that regard?

Mr. Kelley: I wonder if counsel will fix the time and place?

Q. When later did you do that?

A. Well, that was on the same afternoon.

Q. The same afternoon; I can't try to follow your every footstep; the same afternoon?

A. It was the same afternoon, of the 5th.

Q. And what did that examination and inspection reveal?

A. Well, at that time there didn't seem to be anything wrong with the engine outside of a few dented guards and broken pipes, oil lubricator pipes, I guess.

(Testimony of Harry L. Olinger.)

Q. There were some dented or broken lubricating pipes?

A. Yes. The main belt looked like it had a few small tears in it.

Q. How big were those tears in the main belt, do you know?

A. Oh, there wasn't anything serious. I remember they patched up the belt later, they drove some nails in it.

Q. Where are these lubricating pipes? Are they up on the top part of the engine, or where are they?

A. Well, yes, they were running over to the crank pins, I believe.

Q. What type of damage did they seem to have suffered? [269]

A. Oh, it just bent them, knocked them out of position, perhaps.

Q. Looked as though something had hit them, knocked them, bent them, that sort of thing?

A. Well, could have been.

Q. What type of wheel was this engine driving, do you remember?

A. Well, this engine had two wheels; the belt wheel on the engine, as I recall, was a split type wheel.

Q. A split type wheel; just explain to the Court what is meant by a split type wheel.

A. Well, it's a wheel that's in two halves, that are bolted together.

Q. That is, it's cast, and then the two halves are bolted together?

A. That's right.

(Testimony of Harry L. Olinger.)

Q. At opposite points on the circumference of the wheel?

A. Bolted together at the hub and also at the rim.

The Court: The rim isn't in two sections, however, is it?

A. Well, the pulley is in two halves; there's a bolt connection at each side, one on each side of the hub, opposite each other.

The Court: Perhaps I don't understand. I thought a split wheel was the center was in two sections, but the [270] rim, on which the belt runs, was continuous.

A. Like this is the wheel, it would be split right through the center.

The Court: Including the rim?

A. The wheel would be lying flatwise, and the hub in the center, and just like you split that through the center; is that clear?

The Court: Yes; including the rim?

A. Including the rim.

Q. (By Mr. Paine): These two portions of the rim are brought tightly together and held there by bolts, is that it? A. That's right.

Q. Now, did you come back to the governor stop at some time later, after you had been there first with Mr. Janecek?

A. Well, yes, after we tested this thing, these stops, why, as I said before, I kind of surveyed the damage around there, upstairs and downstairs, and I kept thinking about these governors, won-

(Testimony of Harry L. Olinger.)

dering what happened, and by that time the engineer was there.

Q. Mr. Wheeler?

A. Mr. Wheeler, and of course, naturally, I started talking to him, and I said to him "I can't understand what happened." Well, he says "I'll show you what happened." He came over and we re-set this Pickering governor stop [271] again, just the same as Mr. Janecek and I had done previously, and dropped the idler pulley, and we couldn't get it to work.

Q. At that time, half an hour later, it wouldn't work at all? A. That's right.

Q. How many times did you and Mr. Wheeler try it?

A. Oh, that's hard to say, but several times, maybe four or five times, three or four times.

Q. And in none of these operations would it work? A. No.

Q. Could you tell apparently what was causing it to fail to work?

A. Well, no, I couldn't.

Q. You couldn't figure out why it wouldn't work?

A. I couldn't figure out what was the matter with it right then.

Q. Now, did Mr. Wheeler say anything to you at that time as to when he had first seen the stop after the accident, or the condition of it after the accident? A. No, he didn't.

(Testimony of Harry L. Olinger.)

Q. Now, when did you go back, or did you do anything further that afternoon of the 5th?

A. Well, after Mr. Wheeler and I tested that, and was looking around there, I still kept thinking about this [272] governor, and wondering what was the matter, so I went back myself, alone, and started to re-set this and test it myself, and I couldn't get it to trip either.

Q. You couldn't get it working? A. No.

Q. When did Mr. Fullmer arrive?

A. Well, Mr. Fullmer came. I went to meet him out at the airport, and I think it was around, somewhere, maybe 6 or 7 o'clock, and we went and ate dinner, and then we went out to the plant after that.

Q. Who, by the way, is Mr. Fullmer?

A. Mr. Fullmer is the adjuster for the Seattle department of our company.

Q. For the office in Seattle?

A. That's right.

Q. And is that the office out of which you were, or under which you were?

A. I'm under the supervision of the Seattle department, the Seattle office.

Q. So Mr. Fullmer was really your superior, in a way, in that regard? A. That's right.

Q. And did you tell him what you had seen and done at that time, and turn the investigation over to him? A. Yes, I did. [273]

Q. Now, you were present out there several times after that, however? A. That's right.

(Testimony of Harry L. Olinger.)

Q. Were you there at any time alone, or on your own, so to speak?

A. Oh, I was there a number of times by myself after; this was a month or so later.

Q. Now, were you there, were some tests conducted after Mr. Fullmer got there, the next morning?

A. Yes, Mr. Fullmer and I went out together.

Mr. Kelley: The next morning, on July 6?

Q. July 6; and was any of the other Hartford men there at that time?

A. No, I think Mr. Fullmer was——

Q. Well, I'll call your attention; was Mr. Murray there?

A. I don't think Mr. Murray came until Sunday, as I recall.

Q. Sunday the 6th, or 7th?

A. That would be the 7th.

Q. Well, now, do you remember which day it was, then, you all tested this butterfly valve?

A. Well, I believe that was Sunday.

Q. What date was Sunday?

A. Sunday would be the 7th.

Q. And you were present during those tests?

A. Well, I was there, but I wasn't right there when the—— [274]

Q. You weren't conducting them? A. No.

Q. That was up to Mr. Fullmer and Mr. Murray? A. That's right.

Q. Did you ever have any conversations with Mr. Wheeler about the operation of the paper

(Testimony of Harry L. Olinger.)

machines when the butterfly valve was closed, had been closed previously, conversation on the 6th of July with him about it?

Mr. Kelley: Oh, I'd have to object to that. It's incompetent, immaterial, it's hearsay; it wouldn't be binding on the plaintiff if it were material, conversations that he might have had.

Mr. Paine: I think Mr. Wheeler was asked about it.

The Court: I don't recall specifically all these conversations, but isn't this one he was asked about on his cross-examination? Overrule the objection.

Mr. Kelley: Well, it was objectionable at the time of cross-examination, but I didn't object.

The Court: What?

Mr. Kelley: I'm objecting now for the record. There has to be an end, I would think, to it some place, this type of testimony.

The Court: Well, I don't believe it is collateral; I think it would be a proper impeaching question; I'll [275] overrule the objection.

A. (Witness): State the question, will you?

(Whereupon, the reporter read the last previous question.)

A. Well, I wouldn't say what date it was, but I remember Mr. Wheeler saying, remarking, one time, that they had made paper for several hours with this butterfly valve in a closed position.

Mr. Paine: You may inquire.

(Testimony of Harry L. Olinger.)

Cross-Examination

By Mr. Kelley:

Q. Are you still the local inspector for the Hartford Insurance Company here in Spokane?

A. Yes.

Q. As I understand, you've been an inspector for them since 1942? A. 1943.

Q. And you mentioned that you had been an inspector a short time before that for another company? A. That's right.

Q. What company was that?

A. That was the General Casualty Company.

Q. General Casualty?

A. General Insurance Company of America.

Q. With head offices in Seattle?

A. That's right. [276]

Q. And what was the nature of your position with them?

A. Well, it was practically the same type of work.

Q. Inspection of engines?

A. Inspector of equipment, boilers, machinery, pressure vessels.

Q. How long were you with them?

A. Oh, I would say approximately six to eight months.

Q. And did you ever hold any other position as inspector of this type of equipment for any other company? A. No, I never did.

Q. And in addition to being an inspector you also have worked as a stationary engineer?

A. Yes, sir.

(Testimony of Harry L. Olinger.)

Q. You followed that occupation how long?

A. Oh, seven or eight years.

Q. And during that time you worked for the Golden Age Brewery and the Davenport Hotel?

A. And the Continental Baking Company.

Q. Continental Baking Company; now, the first time that you went out to the Inland Empire Paper plant was in 1943?

A. Yes. I started to work for the company in 1943, and it was sometime during that year that I made my first visit there.

Q. And at that time—that was in '43?

A. That I first went out there, yes. [277]

Q. And at that time the Inland Empire Paper Company was carrying engine insurance with your employer, the Hartford Steam Boiler?

A. That's right.

Q. And during the year 1944 and 1945 you had the same position with the Hartford?

A. Yes.

Q. The defendant in this case; and you would call at the Inland Empire Paper Company's plant how often during '44 and '45?

A. Well, of course, we had other equipment out there that I inspected, such as boilers, a track locomotive, and sometimes I may not go out for several weeks, and then I might get out maybe a couple of times a week. It's hard to say just how many times I was out there.

Q. In other words, you would go out at least 40 or 50 times during the year?

A. Well, it wouldn't be that many.

(Testimony of Harry L. Olinger.)

Q. Well, how much would it be?

A. Well, they had five boilers out there that we inspected twice a year. I would probably go out maybe 10 to 12 times, approximately. I don't know.

Q. 10 or 12 times a year?

A. That's just a guess.

Q. You might have gone out twice that much, as far as you [278] know; you don't recall?

A. It's possible.

Q. And you mentioned a moment ago that the Inland Empire Paper Company during '44 and '45 had other machinery covered by insurance, and you were familiar in a general way with this policy, exhibit 18, as to the nature and type of the coverage, I presume?

A. Of course, I—an inspector does not know much about the coverage.

Q. I understand; I said in a general way.

A. Oh, I had a general idea.

Q. You knew they had a total coverage there of some \$50,000.00, didn't you?

A. Insurance limits of \$50,000.00.

Mr. Paine: I don't quite see the materiality of this.

Q. (By Mr. Kelley): In any event, you called at least a dozen to a couple of dozen times a year at the plant, didn't you?

A. Well, now, that's just a kind of a rough estimate on my part. I called when it was time to inspect them, or approximately.

(Testimony of Harry L. Olinger.)

Q. Now, what about the time to inspect this Sumner steam engine; how often did you do that?

A. Well, we plan on making two inspections a year on engines. [279]

Q. On the engines; and then you stated you would make, you made, certain recommendations regarding the Pickering governor on the Sumner steam engine?

A. Yes.

Q. And when you were out at the plant some short time before January 30, 1945, you observed that the only means of safety stop on the Sumner steam engine was the independent mechanical operated stop on the flywheel, did you not?

A. That's right.

Q. Referred to here as the Brownell overspeed stop?

A. That's right.

Q. And you realized that if the belt on the Pickering governor, as shown here on exhibit 8, were to break, that a very serious situation would be created with respect to the run-away speed of the engine?

A. What belt are you talking about, now?

Q. This belt right here.

A. Oh, yes, that's the governor belt.

Q. Yes. Would you read the question, Mr. Taylor?

(Whereupon, the reporter read the last previous question.)

A. Those belts often break.

(Testimony of Harry L. Olinger.)

Q. I wonder if you'd just answer the question, Mr. Olinger? You can have a chair, where you'd be more comfortable. [280]

A. State that question again, will you please?

(Whereupon, the reporter again read the last previous question, as follows: "And you realized that if the belt on the Pickering governor, as shown here on exhibit 8, were to break, that a very serious situation would be created with respect to the run-away speed of the engine?")

A. That's very, very true.

Q. Yes; and you relayed this information to your superiors over in Seattle, and to Mr. J. G. Murray, the chief inspector, in particular, did you not?

A. They were notified of it at the proper time.

Q. Yes, and pursuant to that notification by you, the Hartford wrote a letter, as shown in plaintiff's exhibit 15, to the Inland, which embodied in part your recommendations, isn't that correct?

A. That's customary.

Q. Well, that's correct, isn't it?

A. That's right.

Q. Now, before that any automatic stop would be put on the Pickering governor, the only other precaution would be the Brownell overspeed stop; that's correct, isn't it?

Mr. Paine: You mean independently operated?

Mr. Kelley: Would you read the question?

(Whereupon, the reporter read the last previous [281] question.)

(Testimony of Harry L. Olinger.)

A. That's right, in connection with the pull chain.

Q. (By Mr. Kelley): In other words, the only means of a safety stop on those engines were the independent, mechanically operated stop on the fly-wheel; that's correct, isn't it? A. That's right.

The Court: You're talking about automatic devices, I presume?

Q. Yes, automatic devices. Now, in order for that automatic device, that safety stop, to operate, the engine itself had to overspeed, isn't that correct?

A. That's true.

Q. And with only this type of stop, should that mechanism fail, very serious results would follow, as you have indicated? A. That's right.

Q. That's correct, so you recommended that the governor of the number 4 engine be fitted up in case the governor belt or chain should break or run off? A. That's right.

Q. So that the governor valve would be closed automatically? Answer so the reporter will get it.

A. Yes, that's right.

Q. And you discussed and outlined that situation with Mr. Myron Black at the time of another inspection of April 22, 1945, [282] did you not?

A. No doubt I did.

Q. Well, to refresh your recollection, directing your attention to plaintiff's exhibit number 16, you recall that? A. Oh, yes.

Q. Yes, and that's the fact, isn't it?

A. That's right.

(Testimony of Harry L. Olinger.)

Q. Then pursuant to that time the governor of the number 4 Sumner steam engine with respect to the Pickering governor was equipped with a mechanism that would shut off the steam supply should the governor belt break or run off? A. It was.

Q. It was, was it not?

The Court: It seems to me, Mr. Kelley, that there's no controversy at all about what you've covered so far in this examination; not the slightest.

Mr. Kelley: I didn't think so, your Honor, except in that there was some attempt in that conversation with Mr. Wheeler that the engine would continue to work when the steam came through.

The Court: All this matter about the company recommending the Pickering stop, and it being put on, and accepted by the company, all that's not disputed at all, is it? [283]

Mr. Paine: No.

Mr. Kelley: Well, if we can be satisfied on that, yes.

Q. (By Mr. Kelley): Now, on December 18, 1945, there were no conditions with respect to the Pickering governor or this Brownell overspeed stop or anything about the number 4 engine that required any attention, was there? A. No.

Q. And from December 18, 1945, to July 3, 1946, did you make any other inspection of the number 4 engine? A. What was the date, again?

Mr. Kelley: Give him the question, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

(Testimony of Harry L. Olinger.)

A. Well, I was under the impression I inspected that engine approximately six months before.

Q. I understood you to say in response to your own counsel's questioning that the last inspection before the accident was December, 1945; that's correct, isn't it?

A. I believe it is. I don't recall those dates, you know.

Q. Now, it was on July 4, I believe you stated, that you first heard of this?

A. I believe it was the 4th, yes.

Q. And you mentioned they called you from the Seattle office, you meant the Hartford, of course?

A. Yes.

Q. And then on July 5, around 2:30 p.m., you went out to the plant, is that it?

A. That's right.

Q. And you went down to the engine room, and there were a lot of people there? If you'll answer so the reporter can get it.

A. As I recall, there was.

Q. And at that time, at least, it's now your recollection that both the safety devices had—were in a tripped position, is that it?

A. That's true.

Q. Yes; but you looked at the Pickering governor first, of course?

A. Well, that's one of those things where you can take them both in at a glance.

(Testimony of Harry L. Olinger.)

Q. Well, I understand, but I thought you had testified in response to your counsel's questioning that you looked at the Pickering first?

A. That's right.

Q. By the way, if the Pickering governor had been in a tripped position right after the accident, the number 4 engine itself would not have been idling, would it?

A. You mean if it had tripped?

Q. If the Pickering governor tripped the engine wouldn't [285] idle, would it?

A. Wouldn't idle?

Q. Would not idle?

A. Those Pickering governors are designed so that the engine will idle, bring them down to an idling speed. It doesn't shut the steam clear off. They're made and designed purposely to.

Q. You're sure of that?

A. All that I've seen are that way.

Q. All that you've seen. Well, with respect to that, Mr. Olinger, the governor was a part of the Sumner steam engine, the Pickering governor, was it not?

A. That's right.

Q. And this belt that's shown in exhibit 8 here, to which I just directed your attention, that was part of the governor, was it not?

A. The governor belt, you mean?

Q. Yes; that was part of the governor, was it not?

Mr. Paine: That's just a conclusion, if he's trying to establish whether the belt was part of the insured engine or not.

(Testimony of Harry L. Olinger.)

Mr. Kelley: If I can just ask a few questions without interruption.

A. (Witness): Whether it's a part of the engine or not I wouldn't make the statement; I don't know.

Q. A broken belt would prevent the continued operation of the Pickering governor, would it not?

A. That's true.

Q. That's true, and a broken belt would immediately impair the functions of this Pickering governor, would it not?

Mr. Paine: I think that calls for a legal conclusion.

Mr. Kelley: He's here as an expert.

Mr. Paine: He's not an expert. He's an inspector. If he says the belt breaks and stops the engine, what value that may have as to the legal interpretation of the insurance policy is a question.

The Court: Well, I'll overrule the objection. He can state, from a mechanical standpoint.

A. (Witness): I'll say it would.

Q. And you would also have to say that the belt would have to be replaced before the operation of the Pickering governor could be resumed, isn't that a simple fact?

A. That's very, very true.

Q. Now, Mr. Olinger, I believe you testified with respect to the Brownell overspeed stop that from its general appearance it seemed to be in an operating condition, is that correct?

A. When was this?

(Testimony of Harry L. Olinger.)

Q. When you looked at it. When did you look at, July 5? [287]

A. In operating condition?

Q. Yes. A. Well, the thing was tripped.

Q. I see. By the way, you had tested this Brownell overspeed stop on or about December 18, yourself, by overspeeding it to the tripping point, had you not?

A. I never had overspeeded number 4 engine and tested the Brownell stop.

Q. You had been there when one of the employees of the plant had done so?

A. Not on number 4 engine.

Q. Not on number 4 engine; you're positive of that, are you. A. Positive.

Q. You had never tested the Brownell overspeed stop on the number 4 engine, yourself, before this accident? A. I never have.

Q. Did any other representative, to your knowledge, any other representative of the Hartford Insurance Company ever test it before the accident?

A. Not to my knowledge.

Q. Not to your knowledge; and you were the only inspector for the defendant that overlooked this Sumner steam engine during the time of your employ in the Hartford before the accident of July 3, 1946? [288]

A. That's right.

Q. There wasn't anybody else?

A. Not to my knowledge.

(Testimony of Harry L. Olinger.)

Q. All right. Do you know of your own knowledge how high a speed the Sumner steam engine attained on any overspeed tests of the Brownell overspeed stop? Do you know that?

Mr. Paine: He said he hadn't been present.

The Court: Just a moment. He said he hadn't tested it. How could he?

Mr. Kelley: The question is now whether he had any knowledge of the results of that test, personal knowledge.

A. (Witness): How could I attain that knowledge?

Q. (By Mr. Kelley): Do you, or don't you?

A. Ask the question again.

Mr. Paine: I don't understand what this question is, as to what test Mr. Kelley is referring to.

The Court: Let's have the question.

(Whereupon, the reported read the previous question, as follows: "All right. Do you know of your own knowledge how high a speed the Sumner steam engine attained on any overspeed tests of the Brownell overspeed stop? Do you know that?")

A. (Witness): No.

Mr. Paine: Was that before or after the accident? [289]

The Court: It would apply to both, I presume.

Q. (By Mr. Kelley): When you went down there on July 5 did you notice the main belt of the engine, of the Sumner steam engine?

A. Yes.

(Testimony of Harry L. Olinger.)

The Court: He said he noticed it and it had a slight tear in it.

Q. Did you notice its position with reference to the trigger of the Brownell overspeed stop?

A. No.

Q. You didn't notice that; did you notice the east end of that belt, how far it was away from the trigger?

A. You mean where the belt goes around the pulley?

Q. That's right.

A. No, I didn't. I didn't notice that.

Q. Do you know how far that is, normally?

A. Oh, I've got an idea.

Q. Well, give us the benefit of your idea.

A. Oh, it's probably, maybe, three quarters of an inch, or an inch.

Q. Now, I understood you to say that you had some sort of conversation with Mr. Janecek when you came down there on July 5, is that correct—Mr. Janecek didn't make any claim as to what the condition of the Pickering governor was after the accident to you, did he? [290]

A. The condition of the governor?

Q. That's right. A. No.

Q. No. Now, if I understand you, on July 5 you made three separate inspections of the Pickering governor on the Sumner steam engine?

A. That's true.

(Testimony of Harry L. Olinger.)

Q. So that I don't misunderstand you, in the first place you couldn't understand, as you expressed it, what had happened; that's correct?

A. I wondered why these devices——

Q. Yes, you wondered, naturally, why the devices hadn't worked?

A. That's right.

Q. And you tried the devices several times with Mr. Janecek?

A. That's right.

Q. And then you tried the Pickering control device four or five times on a second occasion, when you went back and you encountered Mr. Wheeler there?

A. That's right.

Q. And on that second occasion you and Mr. Wheeler couldn't get the idler pulley on this Pickering control device to work at all, could you?

A. The trip device wouldn't work, if that's what you mean. [291]

Q. It just wouldn't work, and that was four or five times?

A. Approximately.

Q. Yes; and as you stated in response to your counsel's questioning, Mr. Wheeler didn't say anything to you as to the position of the Pickering governor after the accident, did he?

A. No.

Q. And you didn't ask him, did you? That's the simple truth of the matter, you didn't ask him, did you?

A. Well, Mr. Wheeler wasn't there.

Q. Well, I'm talking now when Mr. Wheeler was there, when you and he tried it together, isn't that true?

A. That probably is.

Q. Yes, that's the truth. Now, then, you were still concerned about why that Pickering governor

(Testimony of Harry L. Olinger.)

didn't work automatically after the belt was broke, even after your experiments with Mr. Wheeler, weren't you? A. That's true.

Q. Yes. And your concern in that respect led you to go back a third time, isn't that correct?

A. You're right.

Q. And you went back alone, didn't you?

A. That's right.

Q. And you couldn't get it, yourself, to trip then, could you? [292] A. No.

Q. Now, in any of those times after the accident when you tried the Pickering governor was the engine operating, the Sumner steam engine?

Mr. Paine: You mean on the 5th, the day he was there, the 5th?

Q. Yes, the 5th. A. No, of course not.

Q. So you can't say whether or not the engine idled or not on that occasion, can you?

Mr. Paine: Well, the engine wasn't going.

Mr. Kelley: I understand; that is, I would think, patent, but I want to get the witness, not Mr. Paine's, notion of it.

Mr. Paine: He's already testified the engine was not operating.

The Court: Read the question.

(Whereupon, the reporter read the last previous question.)

A. No.

Q. (By Mr. Kelley): And is that the time you found loose set screws on the governor?

A. I didn't find any loose set screws.

(Testimony of Harry L. Olinger.)

Q. You never found them at all? A. No.

Q. Did you ever look for them?

A. Well, no, I didn't look for any loose set screws. I looked to see what I could find wrong with this governor, anything that I could find.

Q. But you didn't look for any loose set screws?

A. I didn't find any loose set screws.

Q. You didn't look for any, isn't that correct?

A. Yes, that's right.

Q. After the accident, Mr. Olinger, and at other times than July 5, when you made your initial inspection, did you ever try to stop the Pickering governor—try to stop the engine with the Pickering governor? A. After the accident?

Q. Yes.

Mr. Paine: You mean any other tests that were made?

Mr. Kelley: That's right.

Mr. Paine: To stop the Pickering governor, after the accident.

A. I was present at different tests.

Q. (By Mr. Kelley): I beg your pardon?

A. I say I was present at different tests for that purpose.

Q. Did the engine stop?

A. Brought it down to an idling speed, as I recall.

Q. It didn't stop it? [294] A. No.

Q. Had you ever tried the Pickering governor yourself before this accident, by stopping the engine with the Pickering governor?

A. Not in operation.

(Testimony of Harry L. Olinger.)

A. That's right. That is, I mean while the engine was in operation.

Mr. Kelley: That's all.

Redirect Examination

By Mr. Paine:

Q. You say you were present at tests subsequently made in August, the 4th, I believe it was, when the Pickering governor stop was tested out on the machine in action?

A. I don't remember the dates.

Q. Well, the forepart of August, with Mr. McKeon, Mr. Fullmer, Mr. Murray, and some of the people from the paper mill? A. Yes.

Q. And at that time you stated, I think, to Mr. Kelley, when the Pickering governor valve stop was tripped it brought the engine down to an idling speed, but not to a sudden and absolute stop?

A. That's right.

Q. Did you have anything to do with figuring the idling speed, or just where were you in connection with that [295] experiment?

A. I think Mr. Murray and myself were taking the speed of the line shaft at that time.

Q. You were taking the speed of the line shafting? A. I did.

Q. And what speed did it come down to, do you remember?

A. Well, I'm not sure of those numbers.

Q. Well, relatively speaking?

(Testimony of Harry L. Olinger.)

A. I would say that when they tripped that it was around 300, approximately.

Q. Brought it down to about what?

A. Oh, that would be around about, roughly speaking, between 45 and 50.

Q. Now, were you also present when the butterfly valve was tested by Mr. Fullmer on the 6th? We haven't gone into all these other tests, but I don't want to leave any inference that this man wasn't present.

Mr. Kelley: By the way, this is all repetition; I didn't cross-examine him as to any butterfly tests.

Mr. Paine: Yes, I think there was confusion as to whether or not he had ever tested out this butterfly valve before this accident, or was present at any tests made after the accident.

The Court: I thought he said he wasn't present, but I'll permit him to answer again. [296]

Q. (By Mr. Paine): Were you present on the 7th of July when Mr. Fullmer and Mr. Murray was there, and the engine was operated with the butterfly valve, and it was tested?

A. I was there in the plant, but I wasn't at the engine.

The Court: The same applied the day before, I think.

Mr. Paine: I knew he was there at the plant, and I didn't want to be confused on that.

The Court: Is that all?

Mr. Paine: That's all.

The Court: Any further questions?

Mr. Kelley: No.

(Whereupon, there being no further questions, the witness was excused.

(Short recess.)

(All parties present as before, and the trial was resumed.)

FRED FULLMER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paine:

Q. State your name. A. Fred Fullmer.

Q. And where do you live, Mr. Fullmer?

A. Seattle, 8360-19th, Northwest, Seattle.

Q. What is your present position of employment? [297] A. Adjuster.

Q. For who?

A. For the Hartford Steam Boiler Inspection and Insurance Company.

Q. And how long have you been with the Hartford Company? A. Since June, 1928.

Q. And in what capacities have you served with the Hartford?

A. Well, the first 12 years I was an inspector, and about 2 years as a salesman, and the last 4 or 5 years as adjuster.

(Testimony of Fred Fullmer.)

Q. Adjuster in charge of the Seattle office?

A. Yes.

Q. And does that take in the Spokane territory, under the Seattle office? A. Yes, it does.

Q. What line of work had you been in before you went with the Hartford?

A. Well, I worked for the Washington Machinery; I learned the machinist's trade there, and then I worked about eight months for the Union Iron Works.

Q. Now, in your earlier capacities you were engaged in selling insurance for the Hartford, or soliciting insurance? A. Yes.

Q. Had you solicited the paper company in regard to insurance [298] on their property?

A. Yes, I had.

Q. Did you solicit them for insurance in regard to the line shaft and belting that was broken in this accident? A. Yes, I had.

Q. Had they taken any such insurance with you?

A. No, they turned that down.

Mr. Kelley: That's incompetent, irrelevant and immaterial.

The Court: I think it is. I'll sustain an objection to that. I think it's already in the record that it wasn't insured. That's the only point that's material.

Q. (By Mr. Paine): Now, when did you first get notice of the occurrence on July 3?

A. Oh, I got a telephone call from our special agent, Mr. LaRocque, saying that he had been noti-

(Testimony of Fred Fullmer.)

fied that the belt had broken at the paper company and that there was a lot of damage done to the line shafting. A. And what did you do then?

A. I called Mr. Black; this was rather late at night when I got this call, so the next morning I called Mr. Black, and Mr. Black told me that the belt had broken on the governor and caused a lot of damage to the line shafting, so I told him that I didn't think the line shafting was [299] insured, but if repair had to be made, to go ahead with the repair without prejudice to his company's rights or to ours.

Q. What did you do after that? Did you come over?

A. Yes, I told him I'd be over the next day, and then I came over, and got here in the evening of the 5th of July. I went out to the plant, surveyed the damage, I believe I talked a short time with Mr. Black, then I asked him to tell me about what had happened. He said the belt had broken and damaged the line shafting, and evidently neither one of the safety appliances had worked, so I asked him then if he'd take the butterfly valve out of the line so we could examine it.

Q. Was there anything particular that you observed there that evening—what time of the 5th was it you got in?

A. Oh, it was rather late; it must have been somewhere around 8 or 9 o'clock.

Q. Then was there anything in particular you observed at that time, or was your inspection done mostly after that?

(Testimony of Fred Fullmer.)

A. Well, I just looked around and noticed that there was some line shafting on the floor, and some broken pulleys, and didn't do anything else that night.

Q. Then did you go out there on the 6th?

A. Yes, I did.

Q. The following day, and tell us what you did or observed [300] out there at that time?

A. Well, the butterfly valve was taken out of the line then and it was taken over to the machine shop and put in a vice so that—secured so that it would work up and down, put the weight on it to see whether it would drop closed.

Q. You might just explain—I think we've had one explanation, but it may be a little better if you'll just explain what this butterfly valve looks like after you have it out and opened up.

A. Well, after you have it out and opened up, it don't all come apart, but you can see this damper arrangement in there, so that you can tell whether that damper closes clear up or it don't go clear down to closed.

Q. It's a damper arrangement that sits inside the steam line, and when it's operated it tends to go across the steam line horizontally, or opposite to the direction of the steam line, and shut it off, is that right? A. That's right.

Q. And what was the situation in regard to how far that damper would close with the weight on the arm bringing it down?

(Testimony of Fred Fullmer.)

A. When you put the weight on it would come down to within about a half or three quarters of an inch of closing, then you could push it on down by hand to within an [301] eighth of an inch, but you couldn't close it more than an eighth of an inch.

Q. But the operation of the weight alone brought it down about how far, would you say?

A. Oh, I'd say about half or three quarters of an inch.

Q. What distance is that, now?

Mr. Kelley: I suppose a half or three quarters of an inch.

Q. (By Mr. Paine): Well, measured between what two opposites, the edge of the butterfly valve and the inside of the pipe?

A. About a half or a third of the thickness of this rail out here.

The Court: I think the question was, Mr. Paine's question was directed to what you measured that distance between, wasn't it?

Q. (By Mr. Paine): Yes, I wanted to get that into the record; what were the two opposites that you measured this distance between?

A. Oh, between the opening of the valve and the end of this damper arrangement.

Q. And what would be the effect of that situation? Would steam be able to go through that opening? A. Oh, yes.

Q. And in fairly considerable amounts? Could steam get [302] through an opening of that size readily?

(Testimony of Fred Fullmer.)

A. Well, I'd say it would. A lot of steam could go through a three-quarter inch opening.

Q. Did you ascertain what the cause was that prevented the damper of the butterfly valve from closing closer than that?

A. Well, it was sticking in the packing; it was more binding, and the last eighth of an inch, the damper arrangement wasn't central on the stem, and it struck metal, and you couldn't close it more than that eighth.

Q. And with even an eighth of an inch some steam would come through? A. Yes.

Q. Now, where is this packing or stuffing? I don't know whether it's quite clear in the record.

A. Well, this damper arrangement has a stem on each side so that it can move, and that's where the packing, it goes through this packing. The reason for that packing being in there is so that no steam can go out there.

Q. That's packed to keep the steam from escaping, and if that's packed too hard and gets caked or hard, it prevents the butterfly valve from closing fully, is that right? A. Yes.

Q. What did you do then, after you had inspected the butterfly [303] valve in the shop?

A. Well, then I told them not to do any more with the valve, not repair it or anything, just take it back and put it in the line; we wanted to make a test of that. Q. Was that done?

A. That was done, the next day.

(Testimony of Fred Fullmer.)

Q. Who was present the next day when that test was done?

A. Mr. Janecek and Mr. Murray and myself, and the engineer, Mr. Wheeler.

Q. Mr. Wheeler from the paper company?

A. Yes.

Mr. Kelley: What day was that?

A. That was the 7th of July.

Q. And what procedure did you go through then? How did you proceed to test it?

A. Well, the belt was taken off, the governor belt was removed, and the engineer opened the throttle, and the speed came up to around 250 or 260, and then the Brownell kicked out in the flywheel, we could hear a clicking noise in there; we knew that it had kicked out.

Q. That is the little automatic stop referred to as the Brownell?

A. Yes.

Q. Had tripped, the trigger which rides the arm of the butterfly valve come down? [304]

A. Yes. Well, it got to around 250 or 260, and then it didn't shut off, even though you could hear this clicking noise and know that it tripped, and, well, I don't know how high it run; it got up probably around 300 or so, and I told Mr. Wheeler to close the throttle.

Q. Was that done; was that what brought the engine back down to a stop?

A. When he closed this valve, yes.

Q. That shut off the steam to the engine?

A. Yes, then the engine stopped.

(Testimony of Fred Fullmer.)

Q. The engine at the time had no load on it, did it?

A. No, it was running free, because the damage hadn't been repaired yet to the line shaft.

Q. Then line shaft hadn't been repaired. Then what did you do after the engineer brought it down to a stop?

A. Then we went back and looked at this weight on the butterfly valve, and it had dropped, looked like it was in a closed position, and we didn't touch it. Mr. Wheeler then opened the throttle again, and the engine then took right off, with this valve in a supposedly closed position.

Q. That's this device that shows here on exhibit 8, about the center, we've talked about, this weight, it was dropped down in a closed position so that the butterfly valve inside would be in a closed position?

A. Yes.

Q. And with that, when you turned the steam on, the engine picked up speed, as I understand it?

A. Yes.

Q. What did you do then?

A. Well, we looked at the Pickering stop to see what had happened. I had been told that it wouldn't work.

Q. Do you remember who told you that; was that Mr. Olinger told you?

A. Well, there's been so many told me, I don't know just who told me then, but I went over to this Pickering, and the arm that trips the mechanism, I took hold of that arm and I could move it back and

(Testimony of Fred Fullmer.)

forth. It wasn't so you could flop it around, or anything, but it was slightly loose, so then Mr. Beguelin come along about then, and I told him he should take the set screw out and put in a tapered pin.

Q. Now, so the Judge, will get it entirely clear, just where does this set screw set on, that you noticed was loose?

A. Well, that's the set screw in this arm that trips the mechanism of the Pickering valve.

Q. And that appeared to be loose at that time?

A. Yes.

The Court: Was this on the 6th, now, July 6?

Q. The 7th, wasn't it? A. The 7th.

Q. It was the same day that you made the test on the butterfly valve? A. Yes.

Q. And you recommended that some permanent type of fastening, such as a pin, be driven in there so that there couldn't be any play in there?

A. Yes, we still had——

Mr. Kelley: Well, of course, this is inadmissible, what they did after the horse left the barn.

Mr. Paine: Pretty near all this testimony has been after the horse left the barn.

Mr. Kelley: I'll agree with counsel.

The Court: I think I'll sustain the objection. He can testify what he found there, but as to the recommendation, it will be sustained.

Mr. Paine: Well, I'll withdraw it.

Q. (By Mr. Paine): Did you have any conversation with Mr. Wheeler at that time?

(Testimony of Fred Fullmer.)

A. I don't just remember when I talked to Mr. Wheeler, whether it was the evening of the 5th, but I talked to Mr. Wheeler, and he told me he didn't know anything about it; said he wasn't on shift, but he said that he did know that the engineer, Coy, had stopped the engine. [307]

Q. That he didn't know anything about it himself? A. No, he said he wasn't on shift.

Q. Did you take statements, some statements, from other employees in connection with the matter?

Mr. Kelley; Pardon me; could you read that question, Mr. Taylor?

(Whereupon, the reporter read the last previous question.)

Q. (By Mr. Paine): I mean by that, written statements?

A. Oh, yes, I took a number of statements from different men that had been—oh, paper makers, and the engineer, that's Mr. Coy; I didn't take any statement from Mr. Wheeler, because he said that he wasn't on shift and didn't know anything about it.

Q. Now, did you examine the broken governor belt? A. Yes, I did.

Q. Now, was that on that date, or a little later date?

A. Well, I don't know just when. Somebody showed me the belt and said that it had broken, and I looked at the end of it. It was rather deteriorated.

Mr. Kelley: This is all July 7, your Honor?

A. Well, I don't know just exactly.

(Testimony of Fred Fullmer.)

Mr. Kelley: Well, then, I'd like to have counsel fix the time.

Q. (By Mr. Paine): Can you fix the time, whether it was on the [308] 7th? You were back there again in July, were you, on what date?

A. Well, it was either the 6th or the 7th.

Q. Either the 6th or the 7th, but you're not quite sure in your mind which of those two dates it was?

A. No.

Q. And you examined this belt which was shown to you as the belt that had broken? A. Yes.

Q. And what did you do with it, if anything?

A. Well, I cut that end off of it.

Q. Well, I'll show you, then—you cut an end off of it?

A. I cut the opposite end off; this end had broken.

Q. That's the end that appears rough in comparison with the end that has a smoother cut, is that right? A. Yes.

Q. And you made the cut in the belt?

A. Yes, I cut that off.

Q. Showing you, then, defendant's identification 12, is that the end of the belt that you cut off?

A. Well, it looks like it. I'd say it was.

Q. What did you do with it after you had cut it off?

A. Well, I had it in my pocket a day or two, and we looked at it up in the office, I believe Mr. Black and I looked at it. I took it to Seattle with me.

(Testimony of Fred Fullmer.)

Q. Mr. Black knew you had it?

A. Well, I thought he did.

Q. Is that your best recollection, that you looked at it in his presence? A. Yes.

Q. And you took it back to the Seattle office, and what did you do with it then?

A. I sent it to the engineering department at Hartford.

Q. And when did you see it next?

A. I didn't see it again until here three or four days ago.

Q. When we were preparing for this trial?

A. Yes.

Q. Somebody from the Hartford office showed it to you, or we had it out? A. Yes.

Q. Is it, to the best of your recollection, the piece that you cut off?

A. Yes, this is the piece I cut off.

Q. What was its condition at that time, compared to now; was the coloring the same throughout?

A. Oh, no; the oil has soaked into it, because this was a fresh end that was cut here. It's turned black, and the same way on this end.

Q. The broken and cut places were a somewhat different color immediately after the accident, as compared to [310] what they are now; was that a lighter or darker color? A. They were light.

Q. Does the belt show evidence of wear on it?

Mr. Kelley: Now, just a moment. If the Court please, that's not the best evidence. If he proposes to offer it I want to ask a few questions on voir dire, if your Honor will permit.

(Testimony of Fred Fullmer.)

Mr. Paine: Well, I think I'll reserve the offer.

The Court: Your last question was whether it showed evidence of wear?

Mr. Paine: That's right.

The Court: You mean the piece, or the whole belt?

Mr. Paine: Well, we'll first take the whole belt?

Mr. Kelley: Well, the same objection. To begin with, the belt hasn't been offered in evidence.

Mr. Paine: We haven't got the belt.

The Court: I think it appears here that the belt is not available at this time. I'll overrule the objection.

Mr. Kelley: Just a moment; may I respectfully inquire, is the belt available?

Mr. Paine: The belt was left in the paper company, and your own witnesses testified they didn't know where it was. They thought it was thrown away.

Mr. Kelley: They didn't; they said they thought the [311] Hartford had it. That's what I'd want to know before I'd permit any inquiry as to the deterioration.

Q. (By Mr. Paine): Did you do anything with the remainder?

A. I hung it back on the post.

Q. Did you ever see it again? A. No.

Q. Never had it in your possession? A. No.

Q. Don't know where it is?

A. Don't know where it is.

Q. From your observation of the belt at that time did it show evidence of wear?

(Testimony of Fred Fullmer.)

A. Well, it showed some evidence of wear, but I wouldn't say it was—it was just about like all the rest of the belts that were in use there.

Mr. Paine: I think I'll offer this in evidence now. Mr. Fullmer says it's the piece he cut off. If Mr. Kelley wants it traced to Hartford and back I'll be glad to do it.

The Court: Do you want to ask some questions on voir dire?

Mr. Kelley: Yes, if your Honor please.

Questions on Voir Dire

By Mr. Kelley:

Q. Mr. Fullmer, I believe you said you cut off the end of the belt July 7, or whenever the date was, right after [312] the accident? A. Yes.

Q. And you only retained the portion of the belt that you did cut off, measuring two to three inches in width? A. About that.

Q. And you took that belt with you to Seattle?

A. That's right.

Q. And do you know the type of belt, does it have any trade name, that you got that day?

A. No.

Q. But you do recall that it was a light colored belt?

A. Well, that is where it was cut off, but it was still dark like this where it had been running.

Q. It was still dark like defendant's identification 12? A. Yes.

Q. And you had the whole belt with you on that day, did you not?

(Testimony of Fred Fullmer.)

A. Well, I was down at the engine, and someone handed me the belt and told me that was the belt that broke, and I cut it off and hung it back on the post.

Q. Your cut at that time was made where with respect to the metal lacing of the then belt?

A. Well, this is both ends of the belt.

Q. But it was a metal laced belt, was it, that you cut?

A. Oh, yes. [313]

Q. There was no reason why you couldn't take the whole belt with you?

A. Oh, I just didn't want to bother with it; didn't think anything about it.

Q. You didn't think anything about deterioration until many months afterward, did you?

A. No—yes, I know that that was the main reason why I wanted to take the piece with me.

Q. Then you sent it on to the Hartford and you haven't seen it until a few days ago.

Mr. Kelley: Well, we make the objection for the record, if your Honor pleases, not properly identified, and secondly, from the small object of some two or three inches it would be impossible to determine the belt in its entirety, the condition of the belt in its entirety.

The Court: It will be admitted; objection overruled.

(Whereupon, defendant's Exhibit No. 12 for identification was admitted in evidence.)

(Testimony of Fred Fullmer.)

Direct Examination

(Continued)

By Mr. Paine:

Q. Did you conduct any other tests there than these two you've described on July 7 of the butterfly valve and the Pickering governor valve, at that time? A. Not at that time.

Q. Now, when did you come back to the plant again? [314]

A. I didn't come back again until around, somewhere around the 3rd or 4th or early in August.

Q. Just to refresh your memory, weren't you back there on the 10th of July with Mr. Vandereb when he arrived from Hartford?

A. Yes; I had never left.

Q. Oh, you had never left? A. No.

Q. You were still in Spokane and had been out to the plant, had you?

A. I had been going out there every day.

Q. Getting statements and talking to people and that sort of thing? A. Yes.

Q. Then were you present when Mr. Vandereb came and looked through the plant?

A. Yes, I was.

Q. Did you make any tests or inspections at that time that haven't been covered? A. No.

Q. Now, were you back again, then, in August?

A. I was back again around the 3rd or 4th of August.

Q. And who was here at that time?

A. Well, Mr. McKeon was here then.

(Testimony of Fred Fullmer.)

Q. He's the gentleman sitting here, from Hartford? [315] A. Yes.

Q. And you and who else from the Hartford Company were out there?

A. Mr. Murray and Mr. Olinger.

Q. And what was done in the way of making any tests on any of this equipment at that time?

A. Well, there was a test made on the Pickering governor stop.

Mr. Kelley: Just for the record, so that I won't be interrupting, if your Honor will allow me an objection to all the line of testimony with respect to tests carried on from the month of August on, for the reason that what may have existed as to the condition of the Pickering governor or the Brownell overspeed stop after the initial inspections of Wheeler the day of the accident and Mr. Fullmer and Mr. Olinger a few days after the accident, and up to and including July 10, would be inadmissible, because the evidence does not show the same or similar conditions as existed at the date of the accident.

Q. (By Mr. Paine): Well, in regard to this Pickering automatic stop, which you tested as to its working the steam valve, had it ever been taken out of the steam valve up to that time, or was it in the same condition that it was when you first arrived there? [316]

Mr. Kelley: I thought the testimony was that they took it out July 7?

The Court: No, that's the butterfly.

(Testimony of Fred Fullmer.)

Mr. Paine: There were no further tests on that, of course; it had been sent back to have something done to it.

A. (Witness): There had never been any tests made on the Pickering.

The Court: What is the date, now?

Q. (By Mr. Paine): What date was it in August? A. Around August 3 or 4.

The Court: That's the test on the Pickering stop?

Q. (By Mr. Paine): Yes, on the Pickering stop in operation, is that right? A. Yes.

The Court: I'll overrule the objection, then.

Q. (By Mr. Paine): How was that test conducted?

A. Well, the idler was blocked up and then when the engine was running, then the blocks were knocked out.

Q. Why did you have to put the blocks there, rather than have the belt on operating?

A. Well, we didn't want to throw the belt off——

Q. When the engine was running?

A. ——when the engine was running.

Q. So the idler was blocked up, and the engine was allowed [317] to run, and then what did you do with the blocks?

A. Well, we just knocked the blocks out.

Q. Did that have the same effect as if the belt had been there?

Mr. Kelly: Just a moment; he can ask what effect it had.

(Testimony of Fred Fullmer.)

Q. (By Mr. Paine): What effect would that have as compared with the breaking of the belt?

A. Well, it would be the same thing.

Q. And what happened then?

A. Well, when it dropped, then the Pickering stop shut it down to about, oh, it was idling at around, oh, 45 or 50 revolutions a minute.

Q. Who was there at that test besides the Hartford people that you've mentioned, other than some of the workmen; were any of the——

A. I don't remember. Mr. McKeon was more or less in charge of that.

Q. You don't remember for sure what paper company officials were there?

A. No, I don't.

Q. Now, was the engine actually completely stopped then?

A. Well, we had to close the valve to completely stop it.

Q. Which valve? You're not referring to this valve?

A. Well, no; the main throttle valve. [318]

Q. The main throttle valve that disconnects it completely from the steam line?

A. Yes.

Q. Did you ever have any conversation with Mr. Wheeler in regard to whether or not the paper machine had operated with the butterfly valve in a closed position? If so, when and where?

Mr. Kelley: I object to that, if the Court please, as incompetent, irrelevant and immaterial, does not involve the specific facts of this specific accident,

(Testimony of Fred Fullmer.)

and if the attempt is made to show the condition of the machine on other occasions, of course it would be inadmissible.

The Court: This is carrying out your foundation for impeachment?

Mr. Paine: Yes, it goes to the conversation Mr. Wheeler testified to, the same question that I think was asked Mr. Olinger.

Mr. Kelley: I respectfully urge that the admission of that in the first place was not proper, and the attempt to hatch it up with this witness is also.

The Court: Overruled.

(Whereupon, the reporter read the last previous question.)

A. Well, after we got a letter in Seattle from Mr. Black [319] saying that there was one question that was unanswered when we were here, and that Mr. Wheeler had now made a statement that he found this Pickering in—that it hadn't tripped—as soon as I got that letter from Mr. Black I came over to talk to Mr. Wheeler, and I just asked Mr. Wheeler about finding this governor trip not having worked, he was the first man there, and during that conversation Mr. Black was present, and I told Mr. Wheeler that I had understood that he had made statements that they had been making paper with the butterfly valve closed, and Mr. Wheeler said that he was called out from home about 5 o'clock in the morning to come down, because they was having trouble with the paper, and he said they got him out

(Testimony of Fred Fullmer.)

of bed about 5 o'clock in the morning, and he came down and found that the Brownell had tripped out in the flywheel, but was still making paper, and he re-set that Brownell in the flywheel and everything was all right.

Q. Did Mr. Janecek ever at any time tell you that he had observed or knew the condition of the Pickering stop immediately after the accident?

A. Well, in this meeting that we all had in the office of Mr. Black——

Mr. Kelley: I wonder if you could fix the time, Mr. Fullmer? [320]

A. Well, that was about August 4, I believe; Mr. Janecek said that he just didn't notice that, he was too busy with other things, and he didn't know whether it had tripped or whether it hadn't tripped at that time.

Q. Were you discussing who might have been the first one there, endeavoring to find the first person who saw it after the accident?

A. Well, that's what we were trying to find, someone that had been there right after the accident, what condition they had found it in at that time.

Mr. Paine: That's all.

Cross-Examination

By Mr. Kelley:

Q. Mr. Fullmer, a moment ago you said that you came over to the paper mill again after you had a letter from Mr. Black? A. Yes.

(Testimony of Fred Fullmer.)

Q. Directing your attention to plaintiff's exhibit 13, is that the letter your referred to?

A. That's the letter.

Q. That's the letter; and the statement therein is correct, isn't it, Mr. Fullmer, that "When Mr. McKeon was here (at the Inland Empire Paper Company) there was one question left to be answered, that is, what was the condition of the governor after the wreck"; you mean the Pickering governor? [321]

A. Yes; yes, the Pickering.

Q. Now, you are an adjuster for the Hartford, I believe you said?

A. Yes.

Q. And you have been their head adjuster for how long?

A. Oh, about four or five years.

Q. And I presume—

A. Not head adjuster; that is in the Seattle department.

Q. You also have other adjusters under you, do you?

A. No.

Q. Well, in any event, it's part of your duties to go out and take statements from witnesses who might know something about an accident?

A. Well, where there's any question, that is to obtain the facts.

Q. And pursuant to your duties as adjuster you came over to the Inland Empire Paper Company and you obtained statements from Ralph Janosky?

A. I don't remember just who it was.

Q. We can take time, if you want to look at your files.

(Testimony of Fred Fullmer.)

Mr. Paine: If your Honor please, what is material? There's none been introduced in evidence. Mr. Kelley has copies of it.

Mr. Kelley: Well, it was brought out in direct, and I'm certainly entitled to cross-examine. [322]

A. Well, I remember that name, Janosky.

Q. And you remember the name George Leitner, you took a statement from him? A. Yes.

Q. And you took a statement from D. W. Gibson?

Mr. Paine: Now——

Mr. Kelley: If your Honor pleases, I may go slowly, but it's a constitutional handicap, and it isn't helped by Mr. Paine's interruptions.

The Court: Well, we'll see where it leads.

Q. (By Mr. Kelley): D. W. Gibson?

A. Yes.

Q. You took a statement from Mr. Coy?

A. Yes.

Q. And you took a statement of Mr. R. C. Davis, the machine tender on the number 4 machine?

A. Yes.

Q. And you took a statement of Mr. Janecek, the superintendent of the plant, did you not?

A. Yes.

Q. And you came over here especially to talk with Mr. Wheeler after you had received the letter of August 20, did you not? A. Uh huh.

Q. But you didn't take a statement from Mr. Wheeler, did [323] you? A. No, I didn't.

Q. No; at that time——

A. But Mr. Black was present.

(Testimony of Fred Fullmer.)

Q. Just answer the questions.

Mr. Paine: Let him answer; he's trying to.

Q. (By Mr. Kelley): Did you or didn't you?

A. No, I did not.

Q. And that Mr. Wheeler was the same individual who tested the Pickering stop, or at least examined it, in company with Mr. Olinger, isn't that correct?

A. That's right.

Q. And you knew the results of Mr. Olinger's investigation, isn't that correct? If you'll answer so the reporter gets it.

A. Yes.

Q. And you knew that he had conferred with Mr. Wheeler on the occasion that he was over here immediately after the accident, didn't you?

A. Well, I don't know whether I did or not.

Q. Well, what is your best recollection?

A. I believe I did.

Q. Yes. I believe you stated yourself you were a machinist originally, by trade, and that you had worked with the Washington Machinery Company?

A. Yes.

Q. And you had worked some time with the Union Iron Works?

A. Yes.

Q. And in past years you've tried the Pickering governor in the plant of the Inland Empire Paper Company yourself, hadn't you?

A. I don't know when you mean.

Q. Well, before the accident?

A. Oh, no.

Q. Never had?

A. I don't have anything to do with that.

(Testimony of Fred Fullmer.)

Q. Well, I said before you were on this investigation? A. No, I haven't.

Q. Had you tested Pickering governors in general, yourself? A. No.

Q. Now, if the Pickering governor had been tripped, would the engine have been idling after the accident? A. I'd say it would.

Q. It would; now, reference was made to a conversation that you had July 3, the night of the accident, with Mr. Black. Did you talk with Mr. Black July 3? A. I believe I did.

Q. And I believe you stated in response to your counsel's question that he told you that the belt was broken on the governor? [325]

A. That's right.

Q. Yes; and you stated at that time to go ahead and repair it?

A. Well, that's when I talked to him on the telephone.

Q. When you talked to him on the telephone, yes.

Mr. Paine: Repair "it"; what do you mean, the broken belt?

Q. (By Mr. Kelley): To repair the damage at the mill?

A. Well, I said that it had to be repaired anyway.

Q. Yes.

A. So to go ahead and proceed, without any prejudice to the rights of the paper company.

(Testimony of Fred Fullmer.)

Q. I understand you to testify that you properly qualified the rights of your employer by stating that it was without prejudice, is that your testimony?

A. Yes.

Q. In any event, you understand they had to go ahead and repair to get the mill running?

A. Yes.

Q. In fact, you came over here a number of times and conferred with both the Union Iron Works and the Washington Machinery, yourself, to get the work out as fast as possible? A. No.

Q. You conferred with Clare Olney, I believe?

A. I don't ever remember that; that is, did I go over to the Union Iron Works?

Q. You talked with Olney?

A. Well, I don't know; I may have, and I may not. He probably did come in the office, if it was, it was out at the paper company.

Q. You knew, of course, that Mr. Fred Beguelin was the master mechanic at the Inland Empire Paper Company? A. Yes.

Q. You didn't obtain any written statements from Mr. Beguelin, did you?

A. No. At that time he hadn't said anything about it.

Q. And you and Mr. Olinger were the representatives upon whom the duty of investigation devolved at that time, isn't that correct?

A. That's right.

Mr. Kelley: Now, I may be some time, your Honor.

(Testimony of Fred Fullmer.)

The Court: Well, we'll recess until 1:30, then.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

Spokane, Washington

Thursday, October 9, 1947, 1:30 o'Clock, P.M.

(All parties present as before, and the trial was resumed.)

Cross-Examination of Mr. Fullmer

(Continued)

By Mr. Kelley:

Q. Mr. Fullmer, did you ever make an earlier report, a report earlier than October 18, 1946, to the defendant, that the breaking of the governor belt was the proximate cause of the loss and damage at the Inland Empire Paper Company?

A. That's what it looked like when I first went out there, because I understood that Coy had closed off the valve that closes the steam off.

Q. That's what it looked like at first, to you?

A. Yes.

Mr. Kelley: That's all.

(Whereupon, there being no further questions, the witness was excused.)

JOSEPH G. MURRAY

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paine:

Q. State your name.

A. Joseph G. Murray.

Q. Where do you reside, Mr. Murray?

A. 6833 47th Avenue, Northeast, Seattle.

Q. And what is your occupation?

A. Chief inspector of the Hartford Steam Boiler Inspection and Insurance Company, Seattle Department.

Q. How long have you been with the Hartford Insurance Company? [328] A. Since 1930.

Q. And in what capacities?

A. I was inspector in the field until about 1936, and then was in the Chicago office as a supervising inspector until I came to the Seattle Department in 1944 as chief inspector.

Q. What had your occupation been prior to going with the Hartford? A. Engineer.

Q. In what organization?

A. I was trained in Scotland as a marine engineer, and later came to this country and was in the power light machinery department of the Pullman Car Company, and in the Pullman Free School of Manual Training as assistant chief engineer.

Q. Now, I ask you in regard to these inspection reports that are made by the inspectors of the company, are they made under your set-up?

A. Yes, sir.

(Testimony of Joseph G. Murray.)

Q. And what is the purpose and nature of those reports?

A. Well, the nature of the reports are in order to advise any assured of any conditions which may be—even though they may be a particular object, may be satisfactory for insurance or whether it is unsatisfactory for insurance; whether or not there are conditions which require [329] attention or not.

Q. And on the basis that the company has an option, if they're not satisfied, to cancel the insurance?

A. Yes, sir, either to cancel or suspend.

Q. There's nothing in your inspections that's a guaranty to the insured, or releases him of his duties of inspecting his own machinery, is there?

A. No, sir.

Mr. Kelley: This is leading and suggestive, and gets into a field in which Mr. Murray wouldn't hold himself out as an expert, namely interpretation of the policy.

The Court: Sustained, on the ground it is leading.

Q. (By Mr. Paine): What is the purpose as far as the insured is concerned?

A. Merely to acquaint him of any conditions relative to the operation of the equipment.

Q. That your people have seen?

A. Yes, sir.

Q. Is it any service that is guaranteed to the insured? A. No, sir.

(Testimony of Joseph G. Murray.)

Q. When did you first come to the Inland Empire Paper Company plant in connection with this loss?

A. The morning of July 6, I believe it was.

Q. Who informed you of the conditions out here?

A. I had been informed by adjuster Fullmer in Seattle.

Q. And what did you do when you got to the plant?

A. Well, I surveyed the damage, which was quite a bit. It was merely a cursory examination; there wasn't anything very thorough in it, insofar as I was concerned, but I don't know exactly how far you desire me to go in that.

Q. Well, of course, what you did on the 6th, that was, I think you said, a cursory examination of the general set-up?

A. Yes, of the general conditions.

Q. Then on the 7th were you present when some tests were made in regard to the butterfly valve?

A. Yes, sir.

Q. Will you tell the Court what you saw and what was done at that time?

A. Well, I first saw the valve when it was disconnected from the steam line, and at that time the valve, when we had it in the vise and tried to operate it with a weight on the end, it closed to within half to three-quarters of an inch of closing.

(Testimony of Joseph G. Murray.)

Q. What would be the effect of its closing only to within a half or three-quarters of an inch when in operation?

A. It would allow considerable volume of steam to get to the engine. [331]

Q. Who was present at that test, beside yourself?

A. There was Mr. Fullmer and the master mechanic, I forget his name, of the paper company.

Q. Beguelin? A. Beguelin, yes.

Q. From the paper company?

A. From the paper company, yes.

Q. Did you observe anything in regard to the cause of the failure of the butterfly valve to close any closer than it did?

A. Yes, the packing was tight in the stem.

Q. The packing——

A. The packing would prevent the free movement of the stem to permit proper closing of the valve.

Q. Could it be forced down further?

A. It could be forced down. It was forced down further by adjuster Fullmer.

Q. Then what was done? Were you present when it was replaced in the line?

A. Not when it was replaced. I was there after it had been replaced.

Q. Then were you there when the engine was started up with the butterfly valve in it?

A. Yes, sir.

(Testimony of Joseph G. Murray.)

Q. What happened in that test? [332]

Mr. Kelley: Just for the record, we make the same objection, incompetent, irrelevant, immaterial, what happened in the tests after the accident and after the butterfly valve had been taken out and had been once more replaced in the line, for the reason that the same similar conditions did not prevail as at the time of the accident.

The Court: Overruled.

A. (By the Witness): What was the question?

The Court: Read it.

(Whereupon, the reporter read the last previous question.)

A. Well, the butterfly valve was set, and the trip was set, to, of course, permit steam to go to the engine, and the throttle valve was opened by the engineer, and when the valve was opened by the engineer it wasn't exactly fully opened, so far as I could see, that is, the throttle valve; the butterfly valve tripped, operated, and the engine continued to gain speed, with the result that the engineer was requested to shut the engine down.

Q. That is the so-called Brownell stop that's shown on the exhibit 11, being this little device——

A. Yes, sir.

Q. ——that operates on the wheel; that came out and hit this trip finger? [333]

A. Yes, sir.

Q. But the engine continued to gain speed?

A. Gain speed.

(Testimony of Joseph G. Murray.)

Q. I think it's been covered any number of times, but just to make clear this automatic Brownell stop, how does it operate; on what principle; what causes this little pin to come out?

A. Centrifugal force on the rim of the flywheel overcomes the tension of a spring, allowing a plunger to come out and trip the tripping gear, which is then—the movement is then delivered through the chains to the weighted lever on the butterfly valve.

Q. But when the centrifugal force operates on the wheel this little trigger just had to come out?

A. It has to come out.

Q. And if the trip finger is there it's almost a certainty that it's bound to hit it, isn't it?

A. Yes, sir.

Q. Was anything done after you had shut the engine down at that time, with the butterfly valve in the closed position?

A. Yes, sir.

Q. What was done?

A. The engineer opened the throttle valve, after the engine was shut down, and the engine started up, and he then [334] shut it down; indicating to us that the butterfly had not properly closed.

Q. The allowance of half to three-quarters of an inch you had seen when it was in the machine shop was permitting sufficient steam to go through to operate the engine?

A. Yes, sir.

Q. Were you present again on August 4, I think it was, when Mr. Fullmer, Mr. Olinger, Mr.

(Testimony of Joseph G. Murray.)

McKeon, and some of the representatives of the plant were there, and the test was made on the Pickering governor stop when the machine was in motion?

A. Yes, sir.

Q. Who was there at that time?

Mr. Kelley: Pardon me; when did you say that was?

Q. When was it?

A. That was around—it was after August 4; it was around August 4 or August 5; there were our own representatives, there was Mr. McKeon, Mr. Fullmer, Mr. Olinger, and of course myself, and Mr. Black and Mr. Janecek and the engineer.

Q. Mr. Beguelin? A. Yes, sir.

Q. And what was done at that time?

A. Well, there were preparations made to trip the Pickering [335] governor stop by blocking up, by removing the belt and blocking up the pulley. I saw the——

Mr. Kelley: Pardon me just a moment. Again for the record, your Honor understands we object on the ground it is incompetent, irrelevant and immaterial. What was done a month after the accident of July 3, 1946, by the representatives of the Hartford or anyone else is not binding on the plaintiff.

The Court: Overruled.

A. (Witness, Continuing): Well, I saw the pulley blocked up, that is, the pulley arm blocked up and the belt removed. Myself and Mr. Olinger then

(Testimony of Joseph G. Murray.)

went to the end of the line shafting with a tachometer and checked the speed, the highest speed attained when, I presume, when the pulley was dropped.

Mr. Kelley: I didn't get you; could you read the answer?

A. When the pulley was dropped.

Q. (By Mr. Paine): The line shafting was connected to the engine, so that it had the amount of load on the line shafting?

A. Yes, sir.

Q. And to what speed did it bring it down? Was it a sudden, complete stop?

A. No. [336]

Q. Did it have that effect?

A. The speed dropped; I don't recall the ratio between the line shaft and the engine speeds, but the line shaft I believe was reduced to somewhere around 70 R.P.M., on the line shaft.

Q. And some formula reduces that to the speed of the engine?

A. Yes.

Q. You didn't make those calculations?

A. No, sir.

Q. Then how was the engine completely stopped?

A. The engine was completely stopped by shutting the throttle valve.

Q. Now, it isn't a dangerous or an improper thing to have these valves set it down to idling, without having it shut off?

Mr. Kelley: It is leading and suggestive, of course. It is incompetent, irrelevant and immaterial. We're concerned with what the facts were.

(Testimony of Joseph G. Murray.)

The Court: I'll sustain the objection. The question is how was this one set.

Mr. Paine: Well, I think the tests demonstrated that; I think the only question was, I didn't want an inference that was necessarily improper methods, or anything else, but it was a customary thing to shut them down so they idle, rather than jerk them; you can bring [337] them to a complete stop gradually, without slamming them shut.

The Court: I think that's in the record by another witness already, as I recall. I think that came in without objection, but I'll sustain the objection.

Mr. Paine: That's all.

Cross-Examination

By Mr. Kelley:

Q. Mr. Murray, this so-called test of the Pickering governor on August 4 or 5, a month after the accident, was that the same—was that the first test made by your company?

A. To my knowledge.

Q. After the accident?

A. That is, in operation.

Q. In operation. Well, that was the first—in operation, you mean with a load on?

A. No, with the engine in operation, irrespective of whether or not there was a load.

Q. I see. Now, during that month subsequent to the accident the Inland Empire Paper Company

(Testimony of Joseph G. Murray.)

had gone ahead and made the necessary repairs and got this machinery running again?

A. Yes, that's my belief.

The Court: Does the record show any place when [338] operation started again on this machinery?

Mr. Kelley: I don't think it does. Something I should have brought out. On or about July 20, 1946, this machinery was operating again.

A. (By the Witness): I would say it was around three weeks to a month; I wouldn't be sure of the date.

Mr. Paine: I think, your Honor, the complaint shows the premises were back in operation on the 29th, the use and occupancy is figured up to the 29th of July.

Mr. Kelley: And that is admitted by the pleadings.

Mr. Paine: Yes, we've admitted the amount of use and occupancy damage.

Q. (By Mr. Kelley): So the main line shaft and the number 4 paper machine and the Sumner steam engine were back in operation after the—about July 29?

A. To the best of my belief, yes, sir.

Q. By the way, that number 4 paper machine and the main line shafting and the Sumner steam engine are all one unit in the sense that they are driven by the same motive power, isn't that correct?

(Testimony of Joseph G. Murray.)

A. They are all driven by the same motive power.

Q. And that motive power is the Sumner steam engine itself? A. Yes, sir.

Q. Now, directing your attention to the test of August 4 or [339] 5, did you throw off the Pickering governor and open the hand throttle to trip the Brownell overspeed stop?

A. What was that?

Mr. Kelley: I wonder if you could read the question, Mr. Taylor?

(Whereupon, the reporter read the last previous question.)

A. On August 4?

Q. Or 5th, whatever it was.

A. Or 5th, did we open the throttle to trip the—no, sir, not to the best of my—that was the day we made the test on the line shaft; I was on the line shaft all of the time.

Q. Well, to your knowledge did they do that? Did they throw off the Pickering governor and open up the hand throttle to trip the Brownell overspeed?

A. I don't know that they threw out the Pickering governor and opened up the throttle.

Q. You say you don't know whether they did that? A. Yes.

Q. You don't know?

A. I do not know.

(Testimony of Joseph G. Murray.)

Mr. Paine: Are you sure you haven't in mind the earlier test, where they said they took off—

Mr. Kelley: No, I'm directing his attention to what I thought he testified to August 4 or 5.

A. It was August 4 or 5 I said I was at the line shaft when they threw the pulley off the Pickering governor.

Q. (By Mr. Kelley): And I understood you to say you did not know whether they threw the Pickering governor and opened the hand throttle?

A. My mistake, then.

Q. Then what is the situation?

A. The Pickering governor arm was dropped, to the best of my knowledge.

Q. And they opened the hand throttle to trip the Brownell overspeed stop?

A. I don't know about that, because, as I say, I was not there. The throttle was opened.

Q. By the way, weren't you the individual who had charge of that test?

A. No, not necessarily; when we're working together like that it's everybody's idea; whoever figures that the idea's the best one, we just go ahead with it.

Q. I see. Well, in any event, at the time of these tests was the line shaft connected to the engine by the means of the 22-inch belt? A. Yes, sir.

Q. Now, there wasn't any damage caused by reason of this overspeed test, to the machinery, was there? [341]

A. Not to the best of my knowledge.

(Testimony of Joseph G. Murray.)

Q. No. How high a speed did the Sumner steam engine attain on this overspeed test of the Brownell overspeed stop?

A. I never tested the Brownell stop.

Q. Well, how high a speed did the Sumner steam engine get to when you were present there, August 4 or 5, making the overspeed test of the Brownell stop?

Mr. Paine: I just don't want to interrupt Mr. Kelley's constitutional rights, but I think it might clear up the record, the Brownell stop and butterfly valve were tested at the earlier test.

Mr. Kelley: I'm going to state right now I don't have to submit to this coaching of the witness, and I ask that the Court permit me to examine as much as I can.

The Court: Well, proceed with the examination.

Q. (By Mr. Kelley): Mr. Murray, do you know how high a speed the Sumner steam engine attained at the time of the overspeed test of the Brownell overspeed stop on August 4 or 5?

Mr. Paine: I object to that, as there's no testimony of any such test on the 4th or 5th.

The Court: I think the form of the question is objectionable. I don't recall that there was any evidence [342] of such a test on the 4th or 5th. I'll sustain the objection.

Q. (By Mr. Kelley): When did the Hartford Insurance Company make this test?

A. On the Brownell, or the Pickering?

Q. On the Brownell.

(Testimony of Joseph G. Murray.)

A. On the Brownell, that was in July, about the 5th; I got over there the 6th.

Q. Do you know how high a speed the Sumner steam engine attained at that time?

A. No, sir; there was no way for me to check it.

Q. By the way, Mr. Murray, directing your attention to plaintiff's exhibits 15, 16 and 17, are you the same Joseph G. Murray as signed the letters as J. G. Murray?

A. I did not sign the letters.

Q. That isn't your signature?

A. No, sir.

Q. Whose is it?

A. Mr. Fullmer's, I believe; yes, sir, Mr. Fullmer's.

Q. That came out from the Hartford Seattle office?

A. Over my name. All inspection reports go out over my name, in the Seattle Department.

Q. Oh, you supervised and looked over these letters before they went out?

A. Not necessarily; I do not supervise or look over each [343] letter that goes out.

Q. Well, for example, do you recall the letter of April 25, 1945, being plaintiff's exhibit number 16, that recites: "With respect to the Sumner steam engine, no conditions were observed that require attention at this time." Do you recall that?

A. I did not see the letter.

Q. And do you recall the letter of December 18, 1945, being plaintiff's exhibit 17, which recites in

(Testimony of Joseph G. Murray.)

part: "No conditions were observed that require attention at this time with respect to the Sumner steam engine?"

A. I did not see the letter before it went out.

Q. In any event, Mr. Murray, on those dates, from April 25, 1945, to December 18, 1945, you didn't have knowledge of any conditions of the Sumner steam engine number 4 that required attention, did you?

A. No, sir.

Q. Just to make sure I understand you, I want to ask you when you tested the Brownell overspeed stop, shortly after the accident?

A. That would have been around July 6.

Q. There was no damage caused by reason of this overspeed test?

A. To the best of my knowledge, no.

Q. And then going over to August 4 or 5, when you tested the [344] Pickering governor, I understood you to say to the best of your knowledge there was no damage caused by that overspeed?

A. That's right.

Mr. Kelley: That's all.

Redirect Examination

By Mr. Paine:

Q. This test in July, was there anything connected to the engine in the way of a load at that time?

A. No, sir.

Q. And the purpose of the test was to——

Mr. Kelley: Ask him what the purpose was.

(Testimony of Joseph G. Murray.)

Q. You use this phrase "overspeed"—

Mr. Kelley: I wonder if counsel could—

The Court: Well, go ahead.

Q. (By Mr. Paine): Mr. Kelley used the phrase in questioning you of the "overspeed test"; what was the purpose of the test, to get the engine up to what speed?

A. To the tripping speed of the Brownell stop.

Q. I see; it wasn't to see how fast it would go; just to get it to the tripping speed, to see if it would operate?

A. See if it would operate. On that first inspection there was no way for us to get a tachometer on the engine in order to test the speed.

Q. At the test of the governor stop in August the speed of the engine was gotten up to what? [345]

A. I don't know the speed of the engine, but I know the speed of the line shaft, because that was where I held the tachometer, and that was within 310, 320 revolutions per minute, I recall.

Q. Was that within normal operating speed?

A. I'd say it was.

Q. The purpose of the test was to—

Mr. Kelley: Certainly leading and suggestive.

Q. Some question has been asked you whether the engine and the line shafting were one unit?

A. Yes.

Q. And you have explained that?

The Court: I think we can get along better if you ask the question, and then make the objection.

(Testimony of Joseph G. Murray.)

The Court isn't going to be misled by a leading question, and the objection can be made after it is stated. Go ahead.

Q. (By Mr. Paine): Are the engine and the line shaft a unit in any sense?

A. No, sir; I think I answered that in my previous statement.

Q. And another thing; on these inspections do you inspect any of the uninsured objects or machinery in the plant? A. No, sir.

Q. Your only purpose is to inspect the insured objects? [346] A. Yes, sir.

Recross-Examination

By Mr. Kelley:

Q. Directing your attention to this test of the Pickering governor on August 4 or 5, you say you do not know the speed of the Sumner steam engine at that time? A. No, sir.

Q. Do you know the speed of the line shaft?

A. I stated it was between 310 and 320, to the best of my belief.

Q. Now, what does that mean?

A. R.P.M.; revolutions per minute.

Q. Can you tell us from those figures what the speed of the engine would be?

A. No, I haven't got the ratio between the pulleys.

Q. Now, when the speed of the engine was going at a speed sufficient to drive the main line shaft

(Testimony of Joseph G. Murray.)

310 to 320 revolutions per minute, was there any damage to any of the machinery there?

Mr. Paine: I think that's been covered four or five times. There was no damage; they haven't sued us for any damage.

A. To the best of my knowledge, no.

Mr. Kelley: All right, that's all.

(Whereupon, there being no further questions, the witness was excused.) [347]

PHILIP McKEON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paine:

Q. State your name.

A. Philip McKeon.

Q. And where do you live, Mr. McKeon?

A. 577 Prospect Avenue, West Hartford, Connecticut.

Q. And what is your occupation?

A. Chief adjuster of the Hartford Steam Boiler Inspection and Insurance Company, located in Hartford, Connecticut.

Q. And how many years have you been with the Hartford Company?

A. Since early in 1920.

Q. In what capacities?

(Testimony of Philip McKeon.)

A. Well, the first 3 years, approximately, as an inspector and after that, up until 1930, adjuster, and since 1930, chief adjuster.

Q. What experience did you have prior to that time in machinery, or working around machinery?

A. Well, I went into the Pennsylvania Railroad shops in Philadelphia as a boy, and I was there almost 13 years before I went with the Hartford in the maintenance of motor power.

Q. Now, when did you first come out here in regard to this loss we've been discussing? [348]

A. August 2, 1946.

Q. And what did you do when you got there?

A. Well, Mr. Fullmer, Olinger, Murray and I went right to the plant and went into a discussion with Mr. Black and Mr. Janecek, discussed the whole thing very freely and frankly, trying to find out just what had happened, and in that meeting it was developed for the first time, as far as we knew, at any rate, that Mr. McCoy or Coy had not stopped the engine before Mr. Janecek had gone down there and seen it idling. I mean that was the first time that we knew there was a lapse of time between the occurrence and the shutting off of that valve.

Apparently everyone had assumed that the valve had been shut very quickly, while the engine was speeding.

Q. Was there any discussion there as to who had first seen the condition of the Pickering governor after the accident?

(Testimony of Philip McKeon.)

Mr. Kelley: For the record—pardon me, Mr. McKeon, we object on the grounds that it's incompetent, irrelevant and immaterial, what occurred from August 2, 1946, on, by this witness or any other witness, with respect to the Sumner steam engine, the main line shaft, and the number 4 paper machine, for the reason that the testimony shows that the machine and the main line shaft and the Sumner steam engine had been [349] repaired, renovated and placed in working operation by July 29, and that the same or similar conditions did not prevail on August 2, 1946, when this witness is purported to have made his investigation as to what may have occurred at the time of the accident.

The Court: This last question, as I understood it, pertained to a conversation at the conference, or what was said at the conference.

Mr. Paine: I think Mr. Kelley was a couple of jumps ahead of me.

Mr. Kelley: I didn't want to be objecting all the time. I want your Honor to understand I am objecting to all of this, and I propose to strike it at the end.

The Court: Well, all right, the objection will be overruled. Of course, it would be material to show what, if any, changes had been made in this engine from the time of the accident up until the time of the test.

Mr. Paine: I think the testimony is already in, your Honor, that there were no changes to the engine other than replacing of the belt.

(Testimony of Philip McKeon.)

The Court: It's always possible that there might have been some changes. The Court will let the evidence in, with the understanding that any changes may be shown.

Mr. Paine: It was the testimony of Mr. Olinger and Mr. Fullmer that the engine was in the same condition in [350] August, nothing had been done to it. Of course, the butterfly valve was changed after it was tested in July, and we put in no more tests on it.

Mr. Kelley: I think your Honor, however, gets my point that the machinery had all been put back in operating condition; the mill was operating on July 29, before this witness ever came out.

Mr. Paine: Go back to the question.

(Whereupon, the reporter read the last previous question, as follows: "We there any discussion there as to who had first seen the condition of the Pickering governor after the accident?")

A. Yes, sir, there was.

Q. Was that in the presence of Mr. Janecek?

A. Mr. Janecek, Mr. Black, and the four Hartford men that I mentioned, including myself.

Q. What did Mr. Janecek say in that regard?

A. Well, I asked who was the first one to go down to the engine after the commotion was over, and Mr. Janecek said he thought he was, as I recall it, and then I asked him, "Just tell us what you saw and did down there." He said he went down

(Testimony of Philip McKeon.)

there, he saw some water and vapor, and that the engine was idling, and he sent a water tender, a tender, anyway, over to the boiler room or over to the steam line to close the valve; so [351] then I said "I understand from my conversations that Coy had shut the valve." He said "Yes, but he decided to go over there about the time the man went that I sent"; so that brought out a fact we hadn't been aware of before; and then there was general discussion, this might have done it, and that might have done it, and I think this was on Friday, and it was arranged that when the paper machine would be down, on a Sunday——

Q. Just before we leave that, did Mr. Janecek at any time during that conversation say that he had seen the governor valve or the governor stop in an untripped position immediately after the accident, or knew anything about it?

A. No, there were many questions raised, and I don't know who asked it, I might have, but someone asked about the governor safety stop, if it was tripped, and he said he hadn't taken particular notice of it.

Q. All right, then, were arrangements made to run a test on the Pickering governor stop?

A. On the Sunday, which I believe was the 4th. The purpose of that was that the mill would be idle, and there'd be just the line shaft load, and you could do it without interruption of the job.

(Testimony of Philip McKeon.)

Q. And was that done with the knowledge and consent of the paper company people, or was it done surreptitiously on [352] your part?

A. Oh, no, they took part in it, and helped. In fact, I might say they planned it, and they had their men there, Mr. Wheeler and Mr. Beguelin. It was really a cooperative thing, our men and their men carried it out.

Q. Now describe to the Court what was done at that time.

The Court: What was this date?

Mr. Paine: August 4.

The Court: It's understood that Mr. Kelley's objection goes to all this.

A. I can't say just who did each job, but I was close by the engine when the whole thing was carried out. The engine was first put in motion—no—yes, the engine was first put in motion, and there was talk about knocking the belt off. After a little talk among ourselves we thought that wouldn't be a very good idea, and the best thing would be to make a block and put it under the idler with a string to pull it out.

Q. Why wouldn't it be a good idea to knock it off?

A. We just thought it would be a little safer; that's the way we decided to do it.

Q. Safer to the people or to the machinery?

A. Well, knocking a belt off an engine, personally I don't like it, that's all. It was all done very promptly. They fitted a nice block in there, that

(Testimony of Philip McKeon.)

is, of course, [353] they had to stop the engine before they did that, and then it was started up, and I forget the speed it attained, but the block was pulled out, and at that time somebody was on the shaft with the tachometer, because you couldn't very well put the tachometer on the engine with all the covers and apparatus around it.

Q. For the benefit of the lawyers, not the Court, what is a tachometer?

A. Well, it's a speed counter; and when the engine attained a speed, I forget what it was, but it was around what would be considered operating speed, why, the block was pulled out and the trip functioned instantly, and then the engine came down to an idling speed, and the men on the line shaft, they know what the speed was when it was running up around what you say operating speed, and then what it dropped to, and I think, I wouldn't say for sure if it was Mr. Black or Mr. Janecek, but there was discussion about the ratios, we didn't know them, not being paper makers, but the conclusion was from about 70 R.P.M. it could be fairly estimated the engine was idling about 45 or 50 R.P.M. after the block was pulled out.

Q. That means——

A. R.P.M. on the engine wheel.

Q. 50 R.P.M.; that's about 1 revolution a second?

A. Yes. [354]

Q. What you call idling speed; then how was the engine completely stopped?

(Testimony of Philip McKeon.)

A. Well, about that time, I think it was Mr. Beguelin, I don't know whether I asked him, I asked someone——

Mr. Kelley: If your Honor pleases, the answer doesn't seem to be responsive.

The Court: No, it didn't start out to be. He asked how the engine was stopped.

A. Well, I was trying to tell the sequence, what went on. The engine was eventually stopped by closing the throttle.

Q. While it was in that idling speed did you have any conversation with Mr. Beguelin?

A. I think while it was idling, I'm not sure, but about the time it was stopped, this is so long ago, in connection with all that was going on, there was talk with Mr. Beguelin about the idling speed. He said their valves all have a little clearance in their governors. I think he used the word "feathered"; that was a new word in my experience, but that the valves would all idle with the safety stop tripped.

Q. There were no other tests there that day?

A. Yes, there was; the butterfly valve was tested also.

Q. Now that I think may be improper; that was August, and some repairs had been made on it?

A. Yes, sir. [355]

Mr. Paine: Well, we won't go into that. You may inquire.

(Testimony of Philip McKeon.)

Cross-Examination

By Mr. Kelley:

Q. You say you first came to the Inland Empire Paper Company's plant on August 2, 1946?

A. Yes, sir.

Q. And at that time the plant was in operation, and the number 4 paper machine, and the line shaft, and the Sumner steam engine, were all connected together and operating?

A. Yes, I'm not sure, but I think I went down and saw it. I mean, I think it's a fact that it was operating.

Mr. Kelley: At this time, if the Court please, the plaintiff moves to strike the testimony of the witness McKeon in toto for the reason that it affirmatively appears from the witness that he first came to the Inland Empire Paper Company plant on or about August 2, 1946, and conducted some tests there at a period almost a month after the accident in question, and some time after it is admitted that the plant had been repaired and the machinery in question renovated and operating.

The Court: The motion will be denied.

Mr. Kelley: I have no further questions.

Mr. Paine: I have no further questions. [356]

The Court: All right; I was just waiting for further examination. Then you may be excused.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Paine: The defendant rests.

Mr. Kelley: May I have a minute, your Honor?

The Court: Perhaps it would be well to recess about ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

The Court: The defendant has rested, as I understand it. Do you have any rebuttal?

Mr. Kelley: Call Mr. Beguelin.

FRED BEGUELIN

recalled as a witness on behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination

By Mr. Kelley:

Q. Mr. Beguelin. I believe you've been sworn before. Mr. Beguelin, if the number 4 paper making machinery is engaged upstairs, and this Pickering governor on the Sumner steam engine in the basement trips, what effect does that have on the Sumner steam engine?

Mr. Paine: I object to that as immaterial and not proper rebuttal. There's no evidence that the Pickering device tripped when the paper machinery was [357] in operation. The testimony as to the accident was that the clutch had been thrown and the paper machinery disconnected; at the time of the test only the line shaft was connected. It

(Testimony of Fred Beguelin.)

doesn't seem to me it is rebuttal of anything in this case.

The Court: This goes to what might have happened at the time of the accident, as I understand?

Mr. Kelley: Yes.

The Court: Overruled.

Mr. Kelley: Will you read him the question, Mr. Taylor?

(Whereupon, the reporter read the last previous question.)

A. It would shut the supply of steam off from the engine.

Q. And the engine would stop?

A. It would, it should, stop.

Q. Almost immediately?

A. Very, very rapidly.

Q. Now, was this butterfly valve in a normal operating condition at the time of the accident on or about July 3, 1946?

Mr. Paine: Well, I'll just object to that. Do you mean immediately prior to the accident, or during the accident?

Mr. Kelley: Will you read him the question, Mr. Taylor? [358]

(Whereupon, the reporter read the last previous question.)

Mr. Paine: What I'm trying to get at, if he means immediately prior to the accident, or during the accident, and so forth, and if so, how he knows it, if he wants to place it.

(Testimony of Fred Beguelin.)

Mr. Kelley: You'll have an opportunity to make your argument later. I just want to ask the question.

Mr. Paine: The question is indefinite.

Mr. Kelley: Do you understand the question, Mr. Beguelin?

A. I understand, yes, I believe.

Q. And what is your answer?

The Court: I'll overrule the objection. Go ahead.

A. Well, to the best of my knowledge it was. That's all I could say.

Q. And how close would that butterfly valve normally close?

A. Well, it never closes 100 per cent.

Q. Does any butterfly valve close 100 per cent?

A. Well, certain types might, if they were properly machined, but this is not that type.

Q. Well, would a new butterfly valve of this type close 100 per cent? [359]

A. No, I don't believe so.

Q. Well, how close would this butterfly valve normally close?

A. Oh, I would say 90 per cent, something like that.

Q. Would the butterfly valve have stopped the machine at the time of the accident if it was in the condition in which Fullmer brought it up to your shop after the accident?

Mr. Paine: I object to that as a mere conclusion. The facts are in evidence as to what it did or didn't do.

(Testimony of Fred Beguelin.)

The Court: I've forgotten, there's been so many witnesses, what his qualifications are, as an expert.

Mr. Paine: He's only the master mechanic.

Mr. Kelley: He's the master mechanic, if the Court please.

The Court: I'll overrule the objection. He can testify in his opinion what it would have done.

A. Well, I believe that would have stopped the engine, or slowed it down to less than a dangerous speed, at least.

Mr. Kelley: That's all.

Cross-Examination

By Mr. Paine:

Q. Mr. Beguelin, I think you said the Pickering valve should stop the engine if the number 4 machine was on there as a load, is that right?

A. That's the purpose of it. [360]

Q. Well, the purpose is to bring it down to a speed, an idling speed, something of that sort, where you won't disrupt anything, and then you can control it further if you want it completely stopped, is that right?

A. It would stop it completely if all the load were on.

Q. If the load were off and the engine were running free it would probably permit the engine to idle at about 45 or 50 revolutions a minute?

A. It probably would if everything was free, yes.

(Testimony of Fred Beguelin.)

Q. And after the paper machine had been taken off by throwing the clutches, and the line shafting was broken, if the stop operated at that time it would bring it down to an idling speed?

Mr. Kelley: There's no testimony the clutches were all disengaged. The testimony is it is composed of six or seven parts, all of which had a clutch.

Mr. Paine: I think the testimony is they were, and the line shafting broke, and it couldn't reach the machine.

The Court: Overrule the objection.

Witness: I'd like to have that question.

(Whereupon, the reporter read the last previous question.)

A. It should, yes. It would.

Q. You were present the day they tested this, weren't you? [361]

A. I was present at several tests.

Q. Well, do you remember the test in August, Sunday, August 4, when they tested the Pickering stop?

A. I believe I do. I remember one, and it possibly could have been that one.

Q. And they were there with tachometers measuring the revolutions per minute on the line shaft?

A. I didn't see the tachometer, no, I didn't.

Q. Well, you were present at that test at that time, when the engine was brought down to an idling speed?

(Testimony of Fred Beguelin.)

Mr. Kelley: Object as incompetent, irrelevant and immaterial, what happened one month after the accident, after all the machinery was repaired in running condition.

The Court: This is cross-examination of this witness. Overruled.

Mr. Paine: He's answered; I think he said yes.

Mr. Kelley: It's not proper cross-examination.

The Court: He said it would come to a stop immediately, and now counsel is inquiring why it didn't.

Mr. Paine: He answered yes, didn't he?

Reporter: I have no answer.

Q. (By Mr. Paine): You answered yes?

A. Yes, I answered yes.

Q. And at that time did you tell Mr. McKeon that these [362] stops permitted what you called "feathering," and the machines would idle, on a "feathered" condition?

A. I don't remember telling Mr. McKeon that. I remember making that remark to someone, and I don't remember that word "feathering"; I don't remember using that.

Q. Well, the substance of it was correct and is correct? A. Yes, there is clearance there.

Q. And were any changes made in the valve of the Pickering stop between July and August by your shop men? A. No, there wasn't.

Q. It was in the same condition in August as it was in July? A. Yes.

(Testimony of Fred Beguelin.)

Q. Now, the butterfly valve you say normally closes to about 90 per cent. That would be about how much of a clearance in inches between the inside part of the valve and the butterfly?

A. Oh, that's quite a thing to answer. It could be a 16th, or it could be $\frac{3}{32}$ there, or an 8th of an inch.

Q. If it were open a half to three-quarters of an inch, that would be an excessive amount, wouldn't it?

A. Well, it would be open quite a bit at that.

Q. Well, you repaired it after July to get that clearance down closer, didn't you?

A. I took it apart and cleaned it, and it made a little [363] difference; not very much.

Q. And I think the expression you used was that it would slow it down to less than a dangerous speed, but the engine would still be running, if it hadn't any load on it?

A. That's right.

Q. That was with a load on it, it would slow it down to less than a dangerous speed?

A. Yes, it would slow it down, I believe, if it were only 75 per cent efficient.

Q. It would slow it down some, to a less dangerous speed, but the whole thing would still be running?

A. Yes, but it would be below the danger point.

Q. Without a load on it the engine would continue to gain speed?

A. It takes very little steam to operate that engine with no load on it.

Mr. Paine: That's all.

The Court: Any further questions, Mr. Kelley?
Mr. Kelley: No.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Kelley: The plaintiff rests, your Honor.

The Court: Do you have any further testimony, Mr. Paine? [364]

Mr. Paine: No, your Honor.

The Court: The Court will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, the Court took a recess in this cause until Friday, October 10, 1947, at 10 o'clock a.m.)

Spokane, Washington

Friday, October 10, 1947, 10 o'Clock A.M.

(All parties present as before, and the trial was resumed.) [365]

Plaintiff's Closing Argument

(Mr. Kelley made a closing argument to the Court on behalf of the plaintiff, as follows):

If your Honor pleases, as you remarked yesterday, this has not been a long trial, nor are the facts, most of the salient facts, disputed, nor are the train of events difficult to follow if we keep in mind that what started them all was the breaking of this governor belt on the governor of the number 4 Sumner steam engine.

I know that your Honor is interested more in my trying to be of some assistance in marshalling the facts here than in any attempt at speechifying, so I'll just say at the onset in a sentence or two that the plaintiff's testimony, indeed the entire record, indicates these simple facts: The belt driving the governor broke; the safety device on the Pickering governor failed to function, that device best seen, perhaps, in Exhibit 2, a picture of the Sumner steam engine with the camera facing directly toward it; that device failed to function, and the Pickering governor immediately opened wide, speeding the steam engine, the line shaft pulleys as shown in exhibits 3 and 4, and the paper machine, the number 4 machine itself, upstairs, as shown in exhibit 1, sufficiently fast that the pulleys on this line shaft were broken, and at least one, and I believe the evidence indicates two, but at least one pulley, the driven pulley for the [366] wire section upstairs, broke, as shown in plaintiff's exhibit 7.

The line shaft, as the evidence showed, was twisted and destroyed.

Now, the undisputed fact is that after the accident the Brownell overspeed was in a tripped position. The evidence of the whole record, both the plaintiff's and the cross-examination, indicates that this overspeed on the Brownell device was released by this main line belt shown on exhibit 4, which various witnesses testified was in close proximity with this trigger which is indicated on plaintiff's

exhibit 11 and designated by the letter "T," with the result that the butterfly valve, the second safety device, as shown on a number of exhibits, exhibit 8, exhibit 2, the butterfly valve was closed and the engine brought to an idling speed.

The Court: There's one thing, Mr. Kelley—I don't want to interrupt your chain of thought any more than is necessary, but there's one thing I haven't quite understood about the plaintiff's theory. It's your theory that the Pickering governor stop failed to function, of course?

Mr. Kelley: Yes, your Honor.

The Court: If the Pickering governor stop failed to function then the engine would speed up, clearly, and would "run away," as it's been put here. Why wouldn't it be reasonable to assume that that speed tripped the stop on the [367] flywheel by centrifugal force, rather than the belt coming off and throwing the trip? As I understand, it is your theory that the trip on the flywheel, the Brownell, that that was tripped by the big main drive belt being thrown out of position, the breaking of the driven pulley over on the line shaft, that that was what tripped this Brownell trip. I wondered why it wouldn't be reasonable to suppose that if the Pickering stop didn't work, the increased speed tripped that Brownell stop as it is supposed to trip.

Mr. Kelley: If your Honor pleases, may I keep that question in mind and develop it?

The Court: Yes, surely. I just wanted you to know that I didn't quite understand that feature of it.

Mr. Kelley: And if your Honor pleases, I think we can say at the onset also that the undisputed facts, as indeed shown by the cross-examination of the witness Olinger, the investigator for the Hartford, on cross-examination, were these: The governor, the Pickering governor, was part of the Sumner steam engine. Your Honor may recall that there was an effort made by the plaintiff to have the witness trace the outline of the Pickering governor on exhibit 8, and there was some objection at the time, as I recall, on the grounds that the Pickering governor would be in question a great deal of the time, and that the defense did not desire to have the exhibit cluttered up with marks, or something to that [368] effect. Now, I know that your Honor has the fact in mind that this Pickering governor was part of the Sumner steam engine——

The Court: I didn't think there was any question about that. I always thought a governor was a part of an engine.

Mr. Paine: There's been no question about it; the governor is a part of the engine.

Mr. Kelley: The defendant's answer, and there's been quite a bit of innuendo on cross-examination——

The Court: Well, I can relieve you of the burden of that part of your opening argument. It is the view of the Court that the Pickering governor is a part of the number 4 engine until the contrary is shown.

Mr. Kelley: Thank you. Then likewise, of course, it is undisputed that the belt was a part of the governor. The defendant claims that exhibit

12 was that belt. It's likewise undisputed that the belt of the governor was broke; that's undisputed. It's likewise undisputed that if the belt of the governor had not broken the Pickering governor would have functioned in the ordinary, normal manner, which was to control the speed of the Sumner steam engine. It's likewise undisputed that the broken belt, from Olinger's testimony, and at a glance it really needs no laboring on the point, that the broken belt immediately impaired the functions of the Pickering governor, and in the next [369] place, the belt would have to be replaced before the operation of the Pickering governor could be resumed or its functions restored.

Now, your Honor, will recall some objection, or at least colloquy of counsel, on the occasion of Olinger's cross-examination, to the effect that that, after all, was a question of law for the Court. Well, at the most, it would be a question of mixed fact and law. I submit that just as a matter of common sense anybody looking at the exhibit and understanding the facts would realize that the function would be impaired, but lest we seem to ignore that, I'd like to call your Honor's attention for the moment to the point relative to the impairment of function. Impairment of function means, and I'm quoting now: "The act of performing, the mode of action by which it fulfills its purpose," (Oxford University English Dictionary); "That mode of action or operation which is proper to any organ, faculty, etc.," (Webster's International Dictionary). There can't be any question of it.

Now, let's come right now to the heart of this lawsuit, and I'm referring now to Wheeler's testimony, the man who first observed the position of the Pickering governor after the accident. As your Honor recalled, Wheeler's testimony was unequivocal that the Pickering governor did not trip; did not trip, and as I say, Wheeler was the first one who noticed the Pickering governor, and he testified positively that it did not trip. Now, if your Honor will bear with me, I consider this testimony so important, particularly in view of the fact that much of it was elicited on cross-examination, if your Honor pleases, and Wheeler's testimony I have ordered out in toto, I believe you have a copy of it, Mr. Paine, and I have another copy here for the Court; I want to call your Honor's attention first to the direct testimony of Wheeler as set forth on page 2. "Question: And when you came to the mill July 3, 1946, did you go to the basement where the Sumner steam engine is located? Answer: I did; I went past the engine in question." Your Honor will bear in mind that he said he'd come on shift sometime around 2:30, and he had to change his clothes; he didn't go to work, if I recall rightly, I think it was about 3 o'clock when he was supposed to go to work. The man didn't claim to be there right at the accident, but came immediately after, and went right down. "Question: And did you observe the engine? Answer: I did. Question: Did you observe the Pickering governor on that engine? Answer: I did. Question: Was that Pickering governor tripped? Answer: It absolutely was not."

“Question: Did you observe where the belt of the Pickering Governor to which I am directing your attention on exhibit 8, do you know where that belt was? Answer: It was off; it was gone; lying on the floor. Question: Did you [371] look at the idler arrangement on the Pickering governor? Answer: I did. Question: Did you observe the screws which were holding the arm onto the shaft of the Pickering governor? Answer: I did eventually, yes. Question: And what was their character? Answer: Well, the apparent reason was that that set screw, there was an old key in that little shaft that operates the trigger that kicks out the dog on the ratchet which releases the governor and closes it, and that set screw had evidently worked loose enough so that this arm that comes down and engages with the rod that was fastened to the tightener pulley moved the rod, the rod was loose on the trigger shaft, so that it did not touch the dog on the ratchet enough to throw it out. Question: That was the reason why the Pickering governor didn't shut off automatically after the belt broke? Answer: That's absolutely the reason. I might add, if permissible, that we have to change those belts when we change speeds on the engine, change not only from the belt but from one pulley to another, sort of a cone pulley operation. When we go on slow speed we have to stop and change from one set of pulleys and belts to the other, and the day before, in the afternoon, sometime during the evening shift, I had reason to change those. We changed the speed, and when

you change you have to hold that tightener pulley up off so as to get your belt slack, and it was rather a difficult matter to do, to hold it with one hand and change the belt with one hand, and occasionally that tightener pulley will get away from you and drop, and that kicks out on you, and the day before I had that same experience; I was in a hurry and I accidentally dropped the tightener pulley and it kicked out, and I had to set it, and I was curious to know the reason it didn't kickout at the time of the wreck; I noticed it was not kicked out. The butterfly in the steam pipe was out, but not that."

Concluding the direct examination. Now, if your Honor pleases, his direct examination took about three and a half pages. For seventeen more pages he was subjected to a very skillful and thorough and searching cross-examination; properly so. He's the one man who came there and saw the situation, the first, right after the accident. True, Janecek was down there, but I'm taking this man, whose testimony can't be disputed. There'll be an attempt to impeach Janecek, but let's pass that for the nonce. I'll come to it, but this man Wheeler was there, and your Honor heard him testify. You observed his demeanor and conduct on the stand. Your Honor will have in mind that even I didn't interpose some of my useless technical objections as far as Mr. Wheeler was concerned, because he was being subjected to a cross-examination that I considered proper, went to the very heart of the lawsuit, and he was answering just exactly as he knew the facts and the truth to be. [373]

Indeed, I might say truthfully and honestly, in impeachment of myself, I learned more right in the courtroom from Mr. Wheeler on the specific point than I had ever heard before, and I am very glad for the sake of the plaintiff's case that this cross-examination went to the extent and the degree that it did.

Now, let's see what he had to say on his cross-examination. First, one of the most pertinent parts, on page 11, and while I'm going over this cross-examination I know that your Honor will keep in mind that it dove-tailed exactly with the testimony of Mr. Olinger, who testified that he also looked over the Pickering governor two days later, I believe it was on July 5, with Mr. Wheeler on one occasion. Mr. Wheeler's cross-examination, in part: "Question: Well, you found that it hadn't worked" (speaking of the Pickering automatic stop device) "the first thing, but did you try it after that? Answer: Well, you could work it by hand. Question: You could work it by dropping the rider pulley? Answer: No, not until after they tightened the set screw. Question: Well, now, let's get to this set screw. This set screw is a little screw that goes into this—what do you call it—the trigger arm? Answer: Well, yes. Question: That comes down and lies on the plate? Answer: Well, it has an eye in the end. Question: It comes into a rod here and is fastened with a little screw that goes down and rests or bites [374] into this arm, is that correct? Answer: That's correct. Question: And that's a

little inset hexagon screw, you have to have a special wrench to loosen it or tighten it? Answer: No, the set screw in there was an ordinary set screw with a square head which stood up; it wasn't a sunken set screw. Question: It wasn't a sunken set screw? Answer: Not at that time. Question: You feel quite sure about that? Answer: I am."

Now, permit the interruption; that's of great significance in view of the later testimony that this screw arrangement was taken out and replaced and repaired, and these so-called tests of the Pickering governor on August 4, a whole month later, were made when this set screw was taken out and changed and the Pickering governor repaired and renovated along with the rest of the machinery, which, as your Honor will recall, was hooked up and in operation, and it's undisputed, by July 29. Continuing with the cross-examination, speaking of the set screw:

"Question: It had a little head on it that you could turn? Answer: A square head. Question: Could be tightened or loosened by anybody applying a wrench to it? Answer: That's right. Question: If anybody had touched that or loosened it, it could be loosened up? Answer: It could be, if anyone would, but I don't know why anybody would. It was under that plate which holds the outboard bearing on the governor shaft. It was in a kind of peculiar place to get at anyway. That's one of the reasons why it probably hadn't been looked after, was it being up there out of sight, and it was tight the day before, and it was tight when it was put on." (A man

speaking now who had the servicing of the engines.)
“It just naturally worked loose. Question: And it was tight the day before? Answer: Enough to hold, so that it tripped.”

The point was so important that counsel deemed it necessary to go back later in the cross-examination and grill the witness on it. I call your Honor's attention to the following:

“Question: All right, now then, when was it that you found that it was loose on the trigger?

Answer: As soon as I made the examination.

Mr. Kelley: This is repetition, if your Honor pleases.”

And it was repetition, because he had been taken through it for two or three pages before on the cross-examination, but your Honor properly made no ruling on it, and properly, under the circumstances, there not being a jury, permitted further interrogation on it, and this is what developed:

“Answer: That was one of the first things I did, virtually the first thing I did after I took over the shift and checked my other engines, I examined that, because I [376] wanted to know why it didn't trip out when it tripped out the day before when I was changing the belts. I couldn't understand that, but it was easy enough to see, for me, being familiar with it, that that rod was loose on the trigger finger so that it didn't trip. Question: Did you touch the mechanism at 2:30 and do anything to it?

Answer: No, sir. Question: You just looked

at it? Answer: I just looked at it. Question: By merely looking at it, all you could tell was it hadn't tripped, isn't that right? Answer: I worked the end of the rod. Question: All right—Mr. Kelley: Let him finish, please. Question: That's what I want to get at, whether you touched it, what you did with it. Answer: I touched the end of that trip rod enough to see that it was loose on the trigger finger rod. That's the way I determined it was loose. I had to take the end of it and move it a little, and it didn't move the trip rod, the trip finger."

"Question: Did you make any statements before that all you had done was to look at that device, that you hadn't tampered with it or touched it? Answer: No, I don't think anybody ever asked me anything about it."

And Mr. Olinger, if your Honor recalls, testified fairly and honestly on that point. Mr. Olinger, if your Honor recalls, testified that when he came there on July 5 he had first examined this Pickering governor along with Mr. [377] Janecek, and they tried it three or four times, and it apparently tripped, it apparently kicked out, but Mr. Olinger himself said that he couldn't understand why it hadn't worked the day of the accident. He realized that if it had worked, the accident wouldn't have occurred, and he said he couldn't understand why it hadn't automatically tripped after the belt had broken; that was why, it was on his recommendation, and the exhibits are there in evidence, it was

on his recommendation, and he's the Hartford, that they put on this automatic device, because they recognized the danger that would occur if this Pickering governor didn't function by the belt breaking, so they put on this automatic device, at his own suggestion; to use a common term, it was "his baby," and the first time he and Janecek, Mr. Olinger testified, tripped the automatic stop by hand, pushing up the idler pulley, and it tripped a number of times, so he went around and made some other investigations, this is right July 5, and then he went back to that Pickering governor and he found Wheeler there, and he and Wheeler worked the Pickering governor together, and neither one of them, Mr. Olinger testified, neither one of them could get that automatic trip to work at all, and he testified on that second occasion that they tried it four or five times, and on none of these operations did it work, and then I asked Mr. Olinger the question point-blank, because there had been some very adroit questioning on the point, [378] I asked him what Mr. Wheeler had to say, and Olinger testified that Wheeler didn't say anything at the time to him as to the condition of the trip as he, Wheeler, had found it the day of the accident a couple of days before.

Now, Mr. Olinger was a very fair, honest witness. He might have been a poor investigator on this particular point as far as the Hartford was concerned, because he said that he didn't go up and look for those set screws. I'm not criticizing him. It may be, as Mr. Wheeler said, he was familiar with it, he had

been there twenty or thirty years, that was his livelihood, that's all he had ever done, apparently, as far as this record was concerned, and there may have been a lot of extraneous reasons why Olinger didn't pick out why this device didn't work, but in any event he was a fair and honest man, and he testified he didn't even ask Wheeler what its position was after the accident. That's Olinger's testimony; oh, before we leave Mr. Olinger, your Honor will recall that on cross-examination he said that he came back without Wheeler, without anybody, he came back and he made his own investigation, and he still couldn't understand why that Pickering governor hadn't automatically tripped, so he went back and tried it several times alone, and every time, he testified honestly and I respect him for it, that it didn't work.

Now, if your Honor please, this testimony of Olinger [379] together with Wheeler's proves conclusively that the automatic device after the belt broke, at the time of the accident, failed to function, just as it failed to function within a day or two after. The Hartford's own representatives tried it, and it was not, apparently it was not until a long time later, mayhap that it was until this lawsuit as far as the Hartford is concerned, I don't know anything what's in their files on the point, but it was discovered why this Pickering governor wasn't functioning, which was due to the loose set screw. Now, this set screw was loose at the time of the accident, and this set screw, the automatic safety of the

Pickering governor, was within the definition of an object as far as this insurance policy is concerned. Now, if your Honor will bear with me——

The Court: I don't know whether you care to comment on it or not, but it would seem obvious, under your theory, someone must have tightened the set screw after the accident and then loosened it again.

Mr. Kelley: Not necessarily, if your Honor pleases.

The Court: Didn't Mr. Janecek, an agent of the company, test it and it worked, and afterward Mr. Wheeler tested it and it didn't work? That's the sequence of the tests, isn't it, on the governor?

Mr. Kelley: Well, as I understand it, your Honor, and I think I can say without fear of contradiction, from my [380] own trial notes on the point, and I would welcome your Honor asking Mr. Taylor to get out the record on it, but as I recall Mr. Janecek's testimony on that specific point, he noticed the Pickering governor had not tripped; secondly he noticed the safety chain hadn't pulled from the pin——

The Court: Yes, I remember that.

Mr. Kelley: ——then third, he didn't touch anything; he wanted the insurance man to investigate, which I submit incidentally is a very proper and sensible and logical thing for him to do.

The Court: I wasn't talking about that visit of Mr. Janecek to the engine at the time immediately after the accident. Perhaps I'm wrong, but I

thought he and some agent of the insurance company worked that pulley up and down, and it worked, then subsequently Wheeler and one of the agents tried it and it didn't work, and then it didn't work again?

Mr. Kelley: I think your Honor has in mind this testimony by H. C. Olinger that he came over here and went down to examine the Pickering governor himself on July 5, if your Honor pleases, and the first time that he went down to the Pickering governor he was with Mr. Janecek, and the two of them worked this Pickering governor together right then and there for about three or four times, and it tripped, the idler pulley, working it by hand, it apparently worked; but Mr. Olinger testified right that very same day, your Honor, [381] I think I can safely say, viewing his testimony as a whole, probably within the next half hour, mayhap within the next ten or fifteen minutes, Mr. Olinger went back there and he saw Wheeler, and the two of them went over there, and the two of them tried to trip it the same way that he and Janecek had, and it didn't trip; then Mr. Olinger, realizing that that was a most vital thing, although of course this lawsuit, the possibility of it, wasn't even thought of then, I apprehend, even by the Hartford, nevertheless in completing his own investigation goes back again, I don't know, ten or fifteen minutes, maybe an hour, I don't know, he makes his other investigation, he comes back that very same day, he tells us very fairly and squarely, alone, without anybody

around, he himself tried it and he says it didn't trip.

The Court: The point I was making, if the set screw was responsible for its working or not working, then it must have been loose at the time of the accident, tight when he and Janecek testified it worked, loose when Wheeler and Olinger testified it didn't work.

Mr. Kelley: That might well be. On that point, I call your Honor's attention to schedule 6 of the policy, particularly paragraph 4, the definition of object, and I'm quoting now:

“As respects any such engine ‘object’ shall mean the complete engine so described (which shall include any [382] apparatus used as an auxiliary in the operation of the engine and mounted on its frame, and all inter-connecting piping between parts of the engine), but it shall not include any piping leading to or from the engine, nor the condenser or its connecting pipe (or adapter), nor any electrical machine (other than a governor motor)”

and permit the interruption for me to say that the very specific exception for a governor as a matter of construction argues conclusively that they had in mind to except a governor; of course, in engines of this type, even though some of them may not have had this automatic safety device, which the record shows wasn't apparently on this at the beginning, all of them have to have a governor, we know that. Continuing with the quotation:

“or part thereof, whether mounted with the engine on a common shaft or bed or otherwise, nor any foundation or other structure supporting the engine, nor any mechanism, appliance or shafting connected to the engine by belts, ropes, chains, couplings, gears, pipe or other means.”

Now, if your Honor please, I haven't been able to find what we call a horse and buggy case in the Ninth Circuit. I haven't been able to find too many authorities directly in point anywheres on this specific problem, but the case of *Ocean Accident & Guarantee Corporation vs. Penick & Ford*, [383] 101 F. 2d 493, comes as close to being what we familiarly call a horse and buggy case on this question, the main question which your Honor has to decide, as to whether or not there was an accident within the purview of the policy. It perhaps may save the Court's time if I would respectfully ask your Honor to follow the definition of accident on schedule 6 of the policy as I read the phraseology of the opinion of the Circuit Court of Appeals of the Eighth Circuit in the *Penick* case, in passing on the term accident. In this case I might say to your Honor that the plaintiff owned and operated a sugar cane products refining plant at Cedar Rapids, Iowa, and the policy in question was issued by the Ocean Accident to Penick and Ford, and provided that the insurer would indemnify the plaintiff against loss resulting from an accident to the machinery covered by the policy. Now, the term “accident” was defined in the policy passed on by the court as follows:

“A sudden and accidental breaking, deforming, burning out or rupturing of the object or any part thereof, which manifests itself at the time of its occurrency by immediately preventing continued operation or by immediately impairing the functions of the object and which necessitates repair or replacement before its operation can be resumed or its functions restored.” [384]

If my memory serves me correctly, that's the phraseology of the policy we have in the case at bar. Now, one answer to the very pertinent question that your Honor put from the bench, as to whether or not the Brownell overspeed hadn't been tripped out by the centrifugal force, is that that of course is diametrically, and it must be in view of the evidence and the cross-examination and the statement of counsel and the whole theory upon which the defendant proceeded, that's diametrically opposite from their contention, which I apprehend will be that this Pickering governor functioned; it functioned, they will have your Honor understand, it functioned at the time of the accident, because the one time that Olinger and Janecek tried it, a day or so after the accident, it functioned then, and when they took it out and tested it on August 4, I'm speaking of the Pickering governor now, they'll say “Why, it functioned then, and the real cause of this accident was a leaking”; at least that's the only innuendo. True, they haven't plead affirmatively anything. True, there's a lot of evidence in

here that would have been objected to if there was a jury, on the contention it was such matter that should have been pleaded, but I didn't make the objection, but the inference will be urged upon your Honor that the cause was that this butterfly never closed up, and there was a lot of steam coming in, and in fact they'll say there was some hearsay [385] testimony by Wheeler that at one time the paper machine could run even though the butterfly valve had worked.

Now, the facts, the undisputed facts, are that the safety chain, the handle of which your Honor will observe is on Exhibit 9, the undisputed facts are that at least one and probably two of the employees I believe testified that they pulled it, and one of them, I think it was Leitner, said that he pulled it not once, but twice, and when he pulled it if anything the speed of the machine seemed to increase, and the undisputed facts with respect to the other end of the safety chain, going through the floor, Janecek testified without contradiction that that pin had never been pulled out by the eyes, so that the overspeed governor, as far as being operated by the safety chain, was not.

Now then, I apprehend that the defendant will maintain, "Well, the Brownell control was in a tripped position, so that shows that the safety device must have worked." Well, the answer, of course, is Beguelin's testimony, that goes undisputed, that at times even this main belt, even in a normal operation, would trip that trigger, because

it was flush with it. The testimony is, as I recall, it's only about a half inch distance away, that trigger. Of course, if the trigger were not in a tripped position after the accident, the Hartford wouldn't have any case at all, it wouldn't have any standing anywhere, because it would be [386] patent that none of the safety devices worked, but when they came into court their theory at least, I don't know what it will be by the time we hit the argument, but at least when they came into court the trend of all of their cross-examination was to the effect that that Brownell stop must have worked.

Now, if your Honor pleases, the whole thing hinges on the fact of engine overspeed. I submit that there's no testimony that the overspeed was caused by anything but the engine itself. Your Honor will recall that there was no testimony introduced here that the engine didn't seriously overspeed. Your Honor will recall, although Mr. Murray or one of the Hartford representatives was inclined to say that the steam engine and the main line shaft and the number 4 machine did not operate as a unit, your Honor will recall from your observation at the premises and the testimony of all six of those employees who were present at the time, that the Sumner steam engine and the main line shaft and the number 4 machine all operated as a unit. The only way, and the record is replete on cross-examination too, the only way that the number 4 machine could gain speed was from that engine.

Now, perhaps this is the proper juncture to pause a moment and turn back to the testimony of Mr. Black at the beginning of the trial on this point. Your Honor will recall [387] that he identified Exhibit 1 here as the general view of the number 4 machine. Your Honor will recall the testimony that Janecek and one of the employees was in the vicinity here where my pencil is indicating, at the south end of that number 4 machine, and your Honor will recall that these pulleys and these shaftings which go down through the floor connect with this main line shafting that's set forth in exhibits 3 and 4. Your Honor will recall that all this main line shafting, some 139 feet of shafting, and a number of pulleys, 8, I think, at the time of the accident, with suitable bearings and so on, your Honor will recall that that shafting in turn was connected by one main engine belt, a width of some 22 inches, I believe, heavy, stiff, 9-ply belting, which, as far as its east end is concerned, on the driving pulley of the engine wheel, is in very close quarters, and can't move to the north without hitting a wheel which would kick it back with a tendency to move it south, and of course if it moved a half inch south it would hit the trigger.

Your Honor I know recalls that this number 4 paper machine is made up of some half a dozen component parts, a wire section, a first press and a second press and a third press, the drier section, and finally, 'way back here on the south end, the calender stacks. Now, this whole machine, as I

say, was run by this Sumner steam engine. This Sumner [388] steam engine had, as we know, the two control devices, the Pickering governor and the Brownell overspeed.

Now, your Honor will also recall Mr. Black's testimony that there's a difference between the speed with which this paper goes through from the north to the south, and the speed in revolutions per minute of this Sumner steam engine. Your Honor will recall that the testimony in that respect was that there were some 346 lineal feet of paper coming out of that machine per minute, and in order to get that at the time there was some 138 revolutions per minute. Your Honor will recall Mr. Black's testimony that the maximum speed at which the paper had been run through the number 4 machine was approximately 690 lineal feet of paper per minute, which corresponds, he testified, to an engine speed of 270 RPM's on the Sumner steam engine, and that 690 feet per minute was not quite double the speed at which the engine was set at the time of the accident. Now, that's significant in view of this; there's testimony by both Mr. Black and Mr. Janecek, the mill manager and the superintendent respectively, who certainly ought to know, whose business it is to know the speed of making paper, that they hadn't made paper at that maximum speed for a number of years; my recollection was that it was at least 1940 or 1941, it might have been longer, but it was at least that. In fact, I believe Janecek gave some reasons why they didn't make that high speed [389] now.

Here is a differential that your Honor may want to keep in mind as a matter of arithmetic: The testimony is in there that there's a difference between paper speed and speed of the engine, and there's a constant fixed relationship between paper speed and the speed of the engine, and the speed of the engine in RPM's times 2.52 will give you the paper speed. Your Honor recalls those background facts, I know, and with the view of the premises and the aid of these exhibits which I feel fairly portray the situation, will understand the background upon which was super-imposed this all-important testimony from the six witnesses, every one of whom the Hartford contacted, and from every one of whom the Hartford got a written statement, according to the testimony of Mr. Fullmer, who testified and who stand uncontradicted on this, that the number 4 machine was running faster than they had ever heard it run at a paper-making speed.

The significance of that, of course, is that some of them, I can't recall their names now, or the exact times they said they had been employed, but your Honor will recall that a number of them had been employed there for many years, at least a number of years, and all of them, including the superintendent Janecek, testified that that number 4 machine was running faster than they had ever heard it run at a paper-making [390] speed.

Now, the significance of Mr. Janecek's testimony didn't strike me until the second day of this trial, but if you'll recall, your Honor, this exhibit 5 shows

the press rolls of the first press, and you will recall that Janecek stated that he was up some distance, fifteen or twenty feet, I think he put it, to the south of this position as shown. Now, exhibit 6 is a close-up view of the couch roll of the wire screen. Now, it can be further identified by I think they call these vertical pipes which appear in both exhibit 5 and 6, I think they call them water legs. Well, here are the water legs, and in connection with that, look at exhibit 7, which is a picture of the driven pulley for the wire section, and here's the belt on the pulley which leads down to the pulley on the line shaft. Now, this is the pulley that Janecek said he saw go up in the air, and he said he saw it go up when he was facing in a generally northwesterly direction. Now, then, with respect to the speed of the machine, all these other witnesses testified, Davis and the tender on the number 4 machine, testified to the pulp going up in the air. Janecek said when he was looking over here he saw the pulp go up I think he said four or five feet, and I called his attention to this pipe here at the time, and he said he saw the pulp go up higher than that, and he saw that, of course, first; he must have seen it first before he saw [391] this wire pulley.

Now, the wire pulley, if it was the first thing which broke, if it was the first thing which broke on the machinery, did so after the engine and the line shaft and the machinery were going at an overspeed, just the sequence of events, just from Janecek's testimony alone. To me that's significant. Of course,

it is for your Honor as a trier of fact to weigh the probative value, but it seems to me that that's significant of the fact, in addition to the sworn testimony of these other witnesses, all of whom gave written statements to the Hartford, and all of whom are uncontradicted on the point that the engine must have been running away, and why did the engine run away? Because the control devices didn't work.

Now, it would seem that would be patent, but we also called in a gentleman who is very familiar with this identical machine, who had gone out to the paper mill any number of times over a quarter of a century, who was a capable expert, an engineer, both a mechanical and structural engineer; I believe he's the chief engineer and assistant manager there of the Union Iron Works; I don't apprehend that because the Union Iron Works did the repairing and at least supplied some of the machinery after the accident to the paper mill, that anyone would impugn the testimony of Mr. MacCamy, who testified in response to a hypothetical [392] question that set forth all the facts, and which, although there was a time at the moment, I remember there was some effort to pooh-pooh it, but it had to contain the factor of overspeed, and it wasn't begging the question, because all these six witnesses had testified that they heard this increased speed, that the steady hum of the paper machine at along about 346 lineal feet, or whatever the particular grade was they were making, was familiar to the machine tenders, and they recognized that by then, they heard this roar

or this loud noise and this overspeed, and Mr. MacCamy testified that assuming all the factual situation, and I think the hypothetical question properly embodied what had been testified in the record, assuming all that, what in his opinion produced that damage, and he testified the run-away speed of the engine. Then he was asked the question "What in your opinion must have happened to the control devices on this engine to produce such damage?" and he said they didn't function.

We know the Pickering governor didn't function. We know the safety chain that was pulled didn't function. Now, then, the only other fact the Hartford could stand on was that the Brownell overspeed was in a tripped position, which was undisputed; no representative of the mill says otherwise, but in the same breath the Hartford by their questioning and cross-examination and by their argument will say that that [393] butterfly valve permitted the steam to come in, because it was improperly closed. I apprehend there may be some argument with respect to packing on that, but Mr. MacCamy said that in his opinion the control devices didn't operate. Now, he was also asked on redirect, if I recall, assuming that the trigger of the Brownell overspeed stop was tripped, what could have caused it. He said the trigger being located as it was could have easily been tripped by the main belt, which was, of course, loose as the result of the accident, and unrestrained as to side movements.

Now, also touching on the query your Honor made some time ago, he was asked this question: "In your

opinion would the pulleys on the line shaft have exploded if the control devices on the engine had functioned?" and he answered "No, because the control devices should have functioned before they reached their critical rim speed." Now Mr. MacCamy has had, as I say, a wealth of background and experience in this line. You were told in the opening statement of defendant that experts would be called. I apprehended that there would be some argument impugning Mr. MacCamy, perhaps, because he might be interested in keeping in the good graces of the Inland Empire Paper Company, or something of that sort, and they would have some independent, and we know that the Hartford Company with its vast resources and contacts, if they could have had some independent engineer come here and [394] give independent testimony that the failure of the control devices did not cause this loss and damage, they would have done so, and in fact, I think a reference by Mr. Taylor to the record would bear me out in this, that you were given to understand in the opening statement that there would be such an expert. Now, there hasn't been.

The theory of the defendant as I see it, they have some theory as far as their pleading is concerned, their pleadings would indicate there was no accident within the policy, paragraph 4 of the answer, that the governor belt was not part of the steam engine, paragraph 5 of the answer; that would indicate some theory, but as far as their evidence is concerned, there isn't anything introduced here but confusion sought to be engendered on their cross-examination.

There's been no affirmative testimony showing any theory on the part of the defendant, and I submit, if your Honor pleases, that the plaintiff has sustained the burden of proof in this respect; before I leave, first with respect to this Pickering governor, it is undisputed that the belt broke; secondly, it's undisputed that if the automatic safety had worked the speed of the Sumner engine would have been controlled at least to an idling speed. I don't see how Mr. Paine or anyone else could controvert that. In the third place, Olinger failed to get the automatic safety stop to work on numerous attempts only a couple of days after the [395] accident. In the fourth place, all concerned, prior to the accident, everybody, the Hartford and the Inland both, all concerned agreed that the safety device as originally recommended by the company were O.K. Your Honor has seen these exhibits in which the company has stated not once but several times, December 18, 1945, no conditions were observed that require attention at this time, specifically speaking about Sumner steam engine number 4; I'm referring now to plaintiff's Exhibit number 17. The company said the same thing on April 25, referring specifically to Sumner steam engine number 4, no conditions were observed that require attention at this time, and it came from the Hartford, although there was some quibbling about Murray not signing the letter; and then we have Wheeler's testimony on cross-examination that he had been changing the belt just the day before.

That's the plaintiff's case. What have we got against that? Tests made by the Hartford a month later, when the machinery, line shaft, and the butterfly valve at least, had been repaired and put back in working order, and also a pin had been placed in the Pickering governor in place of the previous set screw, and of course the thing that made the automatic stop work on August 4 was this pin that replaced the set screw. Secondly, in explanation why the Brownell overspeed was in a tripped condition, there was no [396] testimony here adduced by the defendant, if your Honor pleases, that the Brownell overspeed was not in a normal operating condition, but Beguelin's testimony was affirmative, not only on direct but again on rebuttal, that it was in a normal operating condition.

Now, again, there's no testimony adduced by the Hartford that the main line belt could not have tripped the trigger at the time of the accident, and opposed to that you've got Beguelin, you've got Janecek, you've got MacCamy, who all said that it could have. Indeed, Beguelin testified that it actually, during normal operations, had tripped it, and your Honor has the pictures there.

In the third place, this emergency safety chain never worked; the pin was never pulled out of the eyes, Janecek testified. Finally, the engine was idling after the accident. The evidence is that the amount of steam going through the butterfly valve when it was closed as far as the counter-weight would close it still would only permit steam to permit the engine

to run at an idling speed. In other words, the Brownell had not been tripped; in other words, the Brownell had not been tripped, if the Court please, by the centrifugal force. The butterfly valve had been closed as far as it was possible to do so.

I regard these factual questions as all determinative of this case, if your Honor please. [397]

The Court: We'll recess for about five minutes.

(Short recess.)

Mr. Paine: I wonder if I might ask your Honor's indulgence slightly. I have in my own mind broken this argument into two phases, one dealing primarily with the factual situation, the other dealing with the law, even assuming the factual situation might be established in accordance with the plaintiff's theory. I'd like to devote about an hour to the factual situation, so that if possibly we might run five or ten minutes over-time in the noon hour, it would make a more natural breaking in the argument.

The Court: Yes, all right.

Mr. Paine: Just out of sequence, but in passing, in order to clear up any inferences or imputations that Mr. Kelley made in regard to the failure of the defendant to call Mr. Vandereb as an expert witness, he was brought out here as an expert witness, and I think I did refer in my opening statement that I might call him. Your Honor might remember that at the conclusion of the testimony we adjourned early, and we had an agreement that I would in the evening attempt to eliminate any

duplicating testimony. I have no criticism of Mr. MacCamy, no imputations that he wasn't entirely honest, due to the fact that the Union Iron does work for the Inland Empire Paper Company, and when I read over Mr. MacCamy's testimony and carefully analyzed the [398] various things he had said, I realized he had covered all the expert testimony that I thought could be covered in this case, and would be purely repetitious by Mr. Vandereb, and I knocked it out for that reason, and I'm perfectly willing to rely on Mr. MacCamy's testimony. I don't think there's anything harmful to the defendant's theory, and it is extremely important, as I will show.

To begin with, we have to keep clearly in mind this is a suit under an accident policy of insurance. We are governed by that, and it's whether or not the damages that are sought to be recovered here are covered by that policy of insurance. The policy of insurance under section 1 of it is to pay for loss of property to the assured directly damaged by such accident, according to the various schedules contained in the policy, and under schedule 6, the only accident which the policy indemnifies for is an accident caused directly by the breaking, an accidental breaking, of some part of the insured object.

Now, Mr. Kelley in closing up his argument here is apparently going on the assumption that he can recover if he establishes that the engine overspeeded. Of course, this isn't a policy of insurance to cover for damages caused by the overspeeding of an

engine. He's going on the further assumption, and he wound up his argument on that basis, that the control devices failed to function, the engine was running away because the control devices didn't work, as if he were covered under a policy of insurance which protected him from damages in the event of the failure of one of the control devices to operate, but of course he has no such policy of insurance. The breaking of this belt had nothing to do with the failure of the control devices to operate. Of course, it had nothing to do with the failure of the Brownell stop to operate; it wasn't in any way connected with it. It had nothing to do with the failure of the Pickering device to operate; it was the thing that when it broke set the Pickering device off. It was the event which started the Pickering device to functioning, but it wasn't the thing that caused the Pickering device to fail. If the Pickering device did fail, which we claim it didn't, if the Pickering device failed it was due to this so-called improperly set or loose set screw, but there was no breaking of the set screw under the terms of the policy.

Had some portion of the Pickering automatic safety device broken and caused it to fail to operate, then Mr. Kelley might have a logical argument, but the breaking of the belt was in no sense a cause of the failure of the device to operate; it was the inceptive force that caused the device to operate. Something else had to happen if the device failed to operate, to cause it to fail to operate, and to

recover under the policy that would have to be in the [400] nature of a breaking. If it were of a nature that wasn't a breaking, of course there would be no recovery under the policy. Now, as we say, it has to come fundamentally under the policy. The burden of proof is cast upon the assured to show that it does come under the policy. It has to be an accident under the terms of the policy, and an accident, I think I have a couple of well chosen definitions, one from Webster:

“An event that takes place without anyone's foresight or expectation; an undesigned, sudden and unexpected event; chance; contingency; often an undesigned and unforeseen occurrence of an afflictive or unfortunate character.”

And from the case of *Smith vs. Cabarrus Creamery Company*, 8 S. E. 2d 231:

“If the influences, often complex and marked, which bring it about were capable of exact analysis, it would lose its character as an accident. As judicially defined, unusualness and unexpectedness are its essence.”

Now, the testimony here is replete from their own witnesses that the breaking of this belt is an ordinary, usual, foreseeable, expected event; that those belts break regularly, and that was the very purpose of putting on to the engine a device that would counteract any effect that the breaking of [401] the belt might have. Now, had there been no such device upon the machine, and the belt had broken and re-

leased the governor from its control of the engine, then you might say that you had a breaking of a part there which caused the overspeed of the engine, but after the installation of the safety device, the Pickering stop, the breaking of the belt doesn't start the engine to going; it starts the safety device to stopping the engine, and the failure and the cause of it is just as Mr. Kelley said with great vehemence at the end of his argument, the whole thing here is because these control devices failed to operate, but he has sustained no proof that they failed to operate, because of the breaking of the belt, because the breaking of the belt of course didn't cause them to fail to operate; it was the thing that should have put in motion the stopping of the machine.

It seems to me the burden cast upon the plaintiff in this case is to show the following things: First, that there was a sudden and accidental breaking of a part of this machine that directly caused the damage; secondly, that the damage from overspeed isn't insured for that, so they've got to show these facts, first that the belt accidentally broke—bear in mind there isn't any testimony yet as to when the belt broke or why it broke. If a workman had gone through and accidentally struck the belt with a crowbar and the belt had severed, there might have been some argument as [402] to an accidental breaking. Nobody knows whether the belt broke when this first sequence began, whether it broke in the middle, or at the end, so this becomes more or less like a criminal case. We've got a malefactor who

has committed some crime, and we run him down through an examination of the physical evidence primarily, an examination of the direct testimony secondly, but as your Honor knows from your experience in the practice of the law and on the bench, the physical facts where they demonstrate a condition are far more conclusive than the memory of humans as to whether they saw something existing at the time, whether a light was red or green, or whether a device was tripped or whether it was open.

Let's follow through what they've got to show. They've got to show that the belt broke accidentally; that the breaking of the belt disconnected the governor and allowed the governor valve to open and the governor stop failed. Now, at the time this belt breaks two things happen simultaneously; the balls on the governor device collapse because the force from the engine has been removed from the governor. It proceeds to open the governor valve and let the steam come through. At the same time that that happens, instantaneously with it, the rider pulley drops off the belt, because the belt is gone, and of its weight falls down and hits the trigger and releases the safety device which counter-acts [403] the effect of the balls collapsing, by shutting off the valve.

Now, their theory has got to be that when the belt broke this automatic tripping device failed to operate, then that the engine increased speed, then they've got to show that the safety chain device which was pulled up here failed to stop the engine

before the damage was done, because the men testified they went over there and pulled it before the damage was done, but it failed to operate; then they've got to show that the Brownell stop down on the wheel here, operated by centrifugal force, failed to operate because when Mr. Janecek first saw this, as Mr. Kelley pointed out, that wheel and the paper and so forth up here was already going at a speed in excess of the speed at which the Brownell device was set to function, so the Brownell device must have failed, under their theory, or the engine would have been slowed down and no damage would have been done. Then they've got the situation developed where the Pickering device has failed, the hand pull has failed, the Brownell stop has failed, and the engine is racing away, and the property is being damaged, but they've got to stop that engine, because it did stop. Now, there are only three humanly possible ways to stop it, one by the engineer going and disconnecting the whole thing from the steam line, or its being stopped by the butterfly valve or the Pickering valve. Everbody agreed the engineer didn't do that. It is uncontroverted that he [404] went up this cat-walk and shut off the steam after the engine came to an idling speed, and finally brought things to a dead stop; so they've got to stop this engine, and they can't stop it by the Pickering device, because they're depending upon that having occurred at the beginning of the sequence and not functioning so they cogitate this matter for some time, and finally arrive with a speculative theory

that nobody saw, that the dancing belt at the end of this destructive sequence hopped off the wheel, came over and hit the trigger that should have been hit by the Brownell stop, and that brought the machine down to an idling speed.

The Court: Pardon the interruption. There's a point that is a little confusing to the Court, the apparently conflicting theories with respect to these two stops. As I understand it, your theory is, or at least you subscribe to the contention that the Pickering stop worked?

Mr. Paine: That's right.

The Court: When the belt broke; all right, if the Pickering stop functioned when the belt broke, then the engine, according to your theory, would have been immediately reduced to idling speed?

Mr. Paine: That's right.

The Court: All right; what then could have thrown the Browning stop, which has to attain an overspeed in order to trip automatically by centrifugal force? [405]

Mr. Paine: It's all based upon the fundamental misconception in this case, for which there is no evidence, that the belt broke when the machine was operating at a normal speed. Our contention is that's not at all what happened; after this machine had attained the speed at which it was going, and after the destruction had become prevalent, and these things were flying through the air and hitting the oiling machinery, which is right next to this belt, that at that time the belt broke, either by something thrown through the air or by the increased speed,

when the machine has speeded up and this damage has been done and this device is being driven faster and faster by the belt from the engine, then either to something hitting it or the mere strain, as the belt will show, broke the belt. The belt breaking at that point in the sequence of events immediately tripped the Pickering device and shut down the engine, and that's the only physically possible way, as I'll demonstrate, that it could have happened, because the other stops had failed to shut the engine down. We'll show you that all the testimony is that this thing must have worked before that time, and the tripp-hammer must have worked, but when they worked on the Brownell valve and the tests made later, the Brownell valve——

The Court: The butterfly.

Mr. Paine: The butterfly valve, it did not close sufficiently, so that the steam came through it and the engine [406] kept increasing speed, therefore the only other device left to stop it, and we know it was stopped, was the device on the Pickering valve; therefore as a matter of pure logic it follows that the belt broke at the end of the sequence and not at the beginning.

If somebody had been down in the basement, and said "I was passing by the number 4 machine, and the machine was operating normally, and everything was going smoothly and I heard a snap, and I looked up and this belt that operates the governor device was broken, and had flown through the air or was dropping over the wheel, and then this immediate

increase in speed took place," why, of course, you'd be faced then with the proposition that you knew when the belt broke, and what the sequence of events were, but nobody was there, nobody knows, and that's the basis of Mr. MacCamy's testimony. Mr. MacCamy was asked as an expert witness "Well, is this breaking of the belt the only thing that causes overspeed on one of these engines," and he said "Oh, no, there are many other things that may cause that engine to overspeed; your pulleys and pins and devices inside the governor get stuck, or there are are any number of things." He didn't elaborate them, but he went on to say that it was entirely usual, and that he doesn't know, and nobody knows what caused the overspeed. If the overspeed was caused by something other than the breaking of the belt to the governor, then it's clear [407] from the factual situation in regard to how the engine got stopped that it was the breaking of the belt to the governor, allowing the rider pulley to fall down and the mechanism to operate, that brought that engine to a stop.

That's the only physically possible theory under the facts, and I think the uncontradicted, or at least the overwhelming weight of the evidence. It accounts for all the facts and all the testimony, makes a complete whole out of this thing.

The Court: That would necessarily assume that the Pickering governor itself was not functioning normally.

Mr. Paine: That the governor itself, through some other cause, the slipping, there's testimony

there was oil on these belts, on the variable cone pulleys, friction, or lack of lubrication, there are any number of causes that might permit the engine to overspeed without the breaking of the belt. It was assumed, well, sure, that this thing broke first and that caused all this overspeed, and that was assumed more or less by the paper company, more or less by the first adjusters, well, that belt was found broken, sure, the belt broke and that caused the overspeed; if it did cause the overspeed, of course, the Pickering device must have failed, or it would have stopped it right at the inception. Mr. Fullmer says he thought that was true and Mr. Coy turned off the steam and brought it to a stop, but as they went further into this [408] investigation of this crime, they found Mr. Coy was eliminated, he couldn't possibly have done it. They began examining the facts relating to what the butterfly valve had done, and they must come to the inescapable conclusion that the butterfly valve didn't do it. Well, we've eliminated the only two possible causes, and we're at a stalemate; nothing caused this machine to stop; it should be flying to pieces throughout the building, but it didn't; let's examine our original premise. Then they come at once to the conclusion "Well, how do we know this belt broke at the inception of this thing? If the belt broke at the end of the events, when this machine was going rapidly and objects were flying around, what would happen? Then the stopping device would operate and it would stop." Then the paper company, seeing the

danger of that, I think they didn't catch it, Mr. MacCamy was misinformed, and he may have suggested to them "But wait, that can't be, because when that automatic Pickering device stops, the engine stops, it doesn't idle, so therefore it couldn't be the thing that stopped it;" but they had forgotten Mr. Beguelin. Mr. Beguelin knew that this thing would merely bring it down to an idling speed when there wasn't any load on it, and there wasn't any load on it at the end of this thing. The paper machine had been taken off by the clutches to begin with, and of course by the breaking of the line shaft, so that the engine was running free without any load [409] on it, so Mr. Beguelin says "Yes, that valve doesn't shut it down tight, she'll idle"; and they tested that on the 3rd without any change in condition; the change of putting the pin in the stopping device was of no moment; what they were testing was the effect of the closing of the valve after the stopping device had operated, and they took their men out there with tachometers, in the presence of the paper company officials, and they showed that when the Pickering device operated on the engine without any load on it, it brought it down to an idling speed. That was the testimony as to what the condition was after the accident, so then of course they came to the inescapable conclusion that it was the breaking of this belt at the end of the chain of sequences that had caused the engine to stop, because it is out of the question that any other thing could have done it.

Now, let's look that over with a little more care in connection with the testimony. There is no testimony whatever as to any actual testimony when the belt broke. There isn't any testimony that the breaking of the belt caused the engine to overspeed. It's the undisputed testimony of their own expert that there are any number of other causes that don't involve the breaking of that particular belt that could have caused the engine to overspeed. The Court is in this position, determining first what caused the overspeed, no positive evidence of any cause, no positive evidence that the [410] belt broke at that time and caused the speed, the undisputed evidence of their own expert that the increase in speed could be caused by any number of other causes other than the breaking of this belt; nobody was there to observe what they were; they left no evidence behind other than that a certain amount of oil shows on these other pulleys, and if they slip with that oil on, of course they lose their effect.

Then we move down in their sequence of what must have happened. Their sequence is first that this governor device must have failed to operate. Now, what is the testimony in regard to that? It's a very peculiar situation. I don't know just what's gone on. I think your Honor put your finger on it pretty close here when you asked "Does this raise the inference that this set screw was tightened up and then loosened down again?" Now, here is the undisputed testimony on this. Mr. Wheeler says that the day before the accident he had occasion to change this belt, put it over on to the other pulley,

and he doesn't know which way it went; that in the course of that operation he took the belt off the idler pulley dropped and the device operated, so it was in operating condition the day before the accident. Now, the next thing that was discovered in this sequence of events was that on the 5th of July—no, the next thing, I think—well, there may be a little confusion, but on the 5th of July Mr. Janecek and Mr. Olinger, as soon as Mr. Olinger arrived, went [411] to this device and the device was in a tripped position at that time. Now, that of course is a day and a half after the accident, but Mr. Janecek and Mr. Olinger went up there and operated that think four or five times, and every time it operated. Now, that would leave the inference, according to their theory, that it operated immediately before the accident, it missed the one operation that was vital to this case, at the time of the accident, got itself back in shape again and operated four or five times right after the accident, then significantly, I think, and I don't want to cast too much aspersion or anything, I don't know what may have happened there, Mr. Olinger was gone for a half an hour, and when he came back at the end of that half hour, he and Mr. Wheeler went over to this device, and the device from that time on never operated again in the condition in which it was.

They then took that set screw out and put a pin in. He tried it with Mr. Wheeler four or five times; he tried it by himself four or five times, and it

didn't operate. Now, as your Honor said, is the inference from that that this pin was loose at the time of the accident, and that somebody screwed it up so that it was tight at the time that Mr. Janecek and Mr. Olinger operated it, and that then somebody unscrewed it and loosened it up so that it was loose when Mr. Olinger and Mr. Wheeler operated it? That seems almost too incredible, but if you leave out the one time of the accident, [412] then it is possible, that either that screw was loosened up once between the time Mr. Janecek and Mr. Olinger operated that device and the time he and Mr. Wheeler operated it; now, whether that was done deliberately or whether it was done accidentally or whether it was done as a result of the operation of several times of this device by Mr. Janecek and Mr. Olinger, doing that right one time after another had loosened that screw, I don't know.

I'm not going to make any imputations in regard to it, but if the device operated in the middle instance there, when the engine stopped, at least you have the consistency that the device continued to operate up to a certain period, and then from there on ceased to operate because the screw had become too loose. Without it you've got the very anomalous situation that it operates before the accident, but at the crucial, important moment, they claim it doesn't operate, and the screw tightens itself back up and proceeds to operate every time Mr. Janecek and Mr. Olinger attempted to operate it. If it showed signs of looseness, once it operated, once

it didn't, once it did, once it didn't, and finally quit, you might have a different situation, but that isn't the testimony, and I think it raises a terrific assumption here that that screw had been loose, and at the time it had to trip and do something, tightened itself up and tripped, and then got loosened again. I don't know, as I say, whether it was [413] loosened accidentally or on purpose; I don't know as to the testimony of these eye witnesses to this condition, which I say after the passage of time is not to be considered nearly as strong as the physical facts, but what do we find?

Mr. Kelley with a straight face tells us the first person who saw this after the accident was Mr. Wheeler. We went through quite a bit of testimony, and I know your Honor knows that's not the first man that swore under oath he saw it. That man was Mr. Janecek. I haven't any doubt it was a great surprise to Mr. Kelley and Mr. Black when he so testified. I don't want to accuse him of deliberately lying in that regard here; it had been talked about and he had undoubtedly talked this over and thought it must have failed to operate, and he was there, and now he thinks about it, but your Honor knows that this was one of the very important things in this whole investigation, that Mr. Janecek sat idly by for a year and a quarter and never even told Mr. Black until he told it from the witness stand. Now, you know and I know that if Mr. Janecek had in his mind during this whole year and a half that he had seen this thing, and sat there in his office when all these men from Hartford wanted to know

what in the world was the condition of the device after the accident, who saw it, and they called in any number of people and said "Did you see it?" "Did you go near it?"; Coy says no, and finally, two months afterward, they come to Mr. Wheeler, but not a [414] word from Mr. Janecek any time during that whole period.

There's no question that he didn't have any recollection of it; that recollection has come back to him as he thought about the necessity of having that in a non-operating condition. I think that's somewhat true of Mr. Wheeler; I think he's more honestly disposed in regard to it, but Mr. Wheeler was there with Mr. Olinger the 5th of July when these tests were being made, Mr. Wheeler knew it was of extreme importance as to what the condition of that was; Mr. Wheeler didn't tell anybody until Mr. Black got him in, finally on the 20th of August he says "Now, we've cleared this missing point; I've contacted Mr. Wheeler and he says that he saw it."

In the meantime what is the human testimony in that regard? I think frankly the most honest witness I've seen in many a year was Mr. Beguelin. I think he was under a terrific handicap, on a hot spot in this case. His testimony as master mechanic out there might win or lose this lawsuit. Mr. Beguelin came in here and testified I believe absolutely to the truth in all respects. He testified when they put this test on out there on the 3rd of August that the Pickering stop brought that machine to an idling

speed, when he knew it might be vital in their case that the machine come to a dead stop. He testified that previously when that device was operated with no load on the machine it would only bring it to an idling speed, with the testimony that that thing brought [415] it to a dead stop might have been vital to their case. He testified that he built that device, and he went immediately to the scene of it, about 4:30 in the afternoon, of the accident, and what did he say? He said the device had operated.

Now, then, if you're going to put credence into human testimony here, I'd put it in Mr. Beguelin. I stood right in front of him here when I was questioning him on that regard. I could see on his face that he wished he could say that device hadn't operated. He knew that would corroborate Mr. Janecek and Mr. Wheeler, and their case would be complete, but Mr. Beguelin felt that the truth was more important than any lawsuit. He hesitated for a moment; the record will show it; he hesitated for a moment, as to whether that device was open or closed, and he said "No, sir, that device had tripped when I saw it at 4:30 that afternoon." Now then, that was the evidence the paper company was up against. The first witness that they had been able to positively place at the engine after the accident, that had observed the device, was Mr. Beguelin, and Mr. Beguelin said the device had operated, and so for two months they struggled to get some witness ahead of Mr. Beguelin who would say that it hadn't operated, and it took them two months before Mr.

Wheeler's recollection came to the fore and he said "I remember now, it hadn't operated." Up to that time in his conversations with Mr. Olinger and Mr. Fullmer, Mr. Fullmer was trying to get statements, Mr. [416] Wheeler said "I wasn't on shift at the time; I don't know anything about it"; yet on August 20, when it had gotten down to the point where they've got to find out if that device worked or it didn't; if it worked it's one thing, if it didn't work that's another, that's the thing that's left, after they had all left there with that question undecided Mr. Wheeler comes through and says, in thinking that back over, he says "Yes, I think I saw that; I'm positive of it." Your Honor knows human nature; once you start to stir your own recollection, how easy it is to whip up to a degree of positiveness; once you're committed you become positive.

Now, that raises a very strange factor in this case. If Mr. Janecek and Mr. Wheeler are to be believed, that this device hadn't functioned, somebody, someone, against the rules and instructions of the company, went over to that device and tripped it by hand before 4:30 when Mr. Beguelin got there. I don't think from the evidence for a moment that there's any inference that is what happened. I think the evidence is overwhelming that Mr. Beguelin told the truth, that Mr. Wheeler was mistaken, and that Mr. Janecek might be termed somewhat more than merely mistaken. I don't think for an instant Mr. Janecek had that recollection in his mind for a year and a half and decided to disclose it on the

stand, and I don't think Mr. Kelley does, and he didn't argue it. [417]

If you discard him as completely unreliable in that regard, you have the question of Mr. Wheeler, and I'm willing to give Mr. Wheeler the benefit of the doubt. This thing was talked over and over, what did you see and what didn't you see. It became more important that that thing was closed. His recollection began to assume the state that was desired. If the thing is helpful to our friends, and so forth, it's a pretty rare animal that's entirely uninterested in reconstructing the facts. If he had said to Mr. Fullmer "I went to the engine at 2:30, this device hasn't been operated, and no one has been near it" it wouldn't have been operated at 4:30. That's the issue in regard to the evidence as to the operation or non-operation of the Pickering device.

Now we get to the next thing, as to how this thing stopped, if it stopped at all, by the operation of the butterfly valve, and we are confronted with some very remarkable situations. Their theory is the butterfly valve brought the engine down to an idling speed. All right; if it did that it must have been set in motion by something. The first thing that should set it in motion was the pulling of this handle to this wire. What is the testimony on that? Immediately this increased speed was observed up there, Mr. Janowski and Mr. Leitner knew what their duties were; they started posthaste for this spot, and they both arrived there simultaneously,

practically, and I think Janowski said "We both pulled it [418] up together," and they were scared; things were moving, they weren't going to fool around with it. What did they do? They pulled it a foot or a foot and a half in the air. The testimony is undisputed that that's hooked to a taut chain that hooks into this arm of the valve with a pin, oh, four or five inches long. What happened to that pin? The pin came up a foot and a half. That's a matter of physics, and there wasn't over an inch of slack in the wire. That meant that that permitted the butterfly valve to operate. How do they contradict that? They contradict it only with Mr. Janecek, who says the pin was back in the slot. Possibly, but not probably, the pin pulled up a foot and a half would ever go down and hit that hole again.

Maybe it was put back in, or maybe Mr. Janecek was mistaken on that, for this reason; they're bound and committed to stop this increased speed with the butterfly valve. All right; if this was pulled at the time Leitner and Janowski, their own witnesses, say it was pulled, all this damage would have stopped and wouldn't have occurred if the butterfly valve had operated, and they say it did operate, it had to operate. They're forced back to the conclusion that what happened was this thing didn't operate, not the butterfly valve, but the trigger. They're forced to the conclusion that though Leitner and Janowski pulled it up a foot and a half, the pin never came out of that slot. You've either

got [419] to believe Leitner and Janowski didn't know what they were doing—that was incredible; the machinery was going, they were scared; he gave it a second yank, and he could feel it come with the pressure up. Of course they were going to pull that out. That alone doesn't save them.

Here we've got the Brownell stop, that operates automatically. It is set at 250 RPM's. If it had operated it would have operated before the machine was throwing the pulp three feet in the air. What happened there? Well, it didn't operate. Why not? There isn't a word of testimony that it was defective or it was ever found defective. What it is is a spring tied in there under compulsion, tension. As the wheel speeds the centrifugal force pushes this plunger out, as a matter of mechanics and physics. This other object, the trigger, is set out here; you set that the distance you want it to trip when you reach a certain speed, and there isn't any escape for it. The thing goes out, the thing is there, they hit, and they did it right after; they tried it, it tripped, worked every time. There isn't a speck of testimony as to how in the world it could have failed, but they've got to assume it failed, because if it operated and the butterfly valve operated after these two devices set it off, and brought the engine down to idling, it would have done it long before the damage was occasioned, so in desperation, to find some other means to stop this engine, they finally come to the [420] conclusion, well, possibly at the end of everything, the driven pulley breaks,

and this belt begins to flop and has some leeway in it, and it comes down and hits the trigger that should have been hit by the plunger coming out on the wheel, but they don't account for why it hasn't hit it. That fortuitous and accidental event came down and promptly brought everything to a close.

Without any testimony to controvert that sequence of events, it's so highly improbable as to be incredible. Now, it does make a logical picture, looking at it from the defendant's picture, yes, Mr. Leitner and Mr. Janowski pulled that chain a foot and a half, it came out; yes, Mr. Brownell's stop pushed out as he should and he hit this trigger just as he should, but the trouble was not with these two devices. The trouble lay back in the butterfly valve itself, and when the devices caused it to operate and the arm on the butterfly valve over here, the weight, to come down and should have shut off that engine, and that occurred early in these proceedings, the minute Mr. Janowski and Mr. Leitner touched that handle, the minute this wheel got to 250, the butterfly valve arm came down, but what happened? It had gotten packed, and stuck in the packing, and it failed to close sufficiently, so that the volume of steam still coming through under there permitted it to go on and increase in speed, and that's the testimony; it's their own testimony. [421]

After this had been pulled what did the boys say? They didn't know any of the mechanics or the legal implications; they were just telling the truth. "I yanked that up, and I yanked it up, and the ma-

chine kept going on." What did Mr. Beguelin again say? He said "Yes, sir, we got that in there and we found it didn't close as it should; it was only about 90 per cent efficient." It let enough steam come through there to continue to operate that, and without a load on it, by that time the clutches were being thrown, and the line shaft is breaking; what happened? The Hartford boys said "That's all right, let's find out." They took the valve off; they looked at it; they found it stuck in its casing; they said "Let's see what that will do"; they put it back in the engine, turned on the steam; they let it get up until the Brownell stop had tripped, they heard it trip, and the machine kept right on going, and Mr. Wheeler himself says "Yes, I was on the throttle; I had to shut her down to keep her from running away"; so they said "Let's leave her down and try again," so they left the butterfly valve down and tried again, and turned on the steam, and the engine started right up and started to go away.

That's consistent with what we must know, the honesty of these boys. If there had been a question as to whether any witness got there and pulled that thing, there'd be some testimony the Brownell was in a broken condition, and hadn't [422] operated. No, the Brownell stop was right there, the minute they tried it on the 5th she worked, she worked ever since; there's no reason suggested why in the world it shouldn't work, so it brings it right back to the fact that the butterfly valve itself was defective, but that's not anything covered under this policy. There

wasn't any accidental breaking. There was merely an accumulation of stuffing and sticking in that valve, which is purely a matter of maintenance of their own department, but from the sequence of events as I say, setting it into the whole, that's going to account for everything in this with the one exception of Mr. Janecek's testimony.

Everything else can be accounted for except his statement that immediately afterward he saw it hadn't operated. If this sequence took place, the handle was pulled, the Brownell stop worked, but the butterfly valve failed to operate, and the machine kept going on, then by the process of elimination there's absolutely nothing else that could have stopped that engine or brought it to idling speed but the operation of the Pickering stop. Now then, we know from the physical facts when this belt broke, which we never have known before. Nobody has known before. We know now. It is an inescapable conclusion that it broke at the end of the sequence of events, and was the motivating cause in bringing the machine back to idling and stopping the damage. [423]

Well, of course, if that's so, the damage wasn't directly caused by the breaking of the belt, assuming the belt was part of the machine, which we don't dispute, and that that breaking was an accidental breaking, the damage couldn't have been caused by it, because the damage had all occurred prior to it, and it was the breaking of the belt itself which brought the machine down and slowed it up.

Now, I think the conclusion is inescapable that this machine started up, got going somewhat fast, the line pulley upstairs broke first, the rollers were released, which took some of the load off this engine, made it possible, probably, for this butterfly valve to fail to function; if all the load had stayed on maybe the butterfly valve would have functioned and brought it to a stop, but with the release of the machine through the throwing of clutches, with the breaking of the pulleys, of course that released all the machinery on the line shaft, the machine was pretty free to go, and the butterfly valve let it go, and the machine would have been going yet, in pieces, if it hadn't been for the intervention of the Pickering device that brought it to a stop. Now, the tests made out there on the 3rd, let's see, will they stop this machine as it comes down? They weren't interested any longer in the set screw pin. They could just as well have operated that wholly by hand. When they got down into the valve they found that the power was going through and that it brought it [424] to an idling speed, consistent with the testimony of the people in the boiler room right after the accident, the engine was down to idling speed and wasn't completely stopped.

Looking at it from that point of view, the burden is on them to sustain, by the preponderance of the evidence to show that the breaking of the belt was the direct cause of the damage. The case they built up to show that consists of an assumption that the belt broke at the beginning, uncorroborated by any

evidence, an assumption that the breaking of the belt then caused the overspeed, that the Pickering device failed to work, that the overspeed then continued, that the pulling of the pin by their two employees failed to work, that the Brownell stop failed to work, that finally a belt came sliding out of the no-where, hit the trigger, and the butterfly valve brought the engine down to a stop.

Contrary to that, as I say, is the uncontradicted physical proof that the butterfly valve was worn, defective and stuck; in twice checking that it wouldn't bring it down, the almost inescapable belief that Janowski and Leitner must have pulled that trigger far enough to drop the butterfly valve, the undisputed evidence that the Brownell was in good working order, and would have stopped the machine, the testimony of Mr. Beguelin, who made the Pickering, that at 4:30 it had operated, and against the whole thing you've got Mr. Jancek saying "Well, I'll cinch this case; I saw it [425] immediately, and it hadn't operated"; and you've got good intention of Mr. Wheeler, who's talked it over so many times, that he saw it and it hadn't operated.

Outside of those two tiny pieces of human testimony everything else fits into the theory that this Pickering stop happened at the end of the sequence and not the beginning.

(Whereupon, at 12:15 o'clock p.m., the Court took a recess in this cause until 1:45 o'clock p.m.)

Spokane, Washington

Friday, October 10, 1947, 1:45 o'Clock P.M.

Mr. Paine: Just in passing, if your Honor please, the case Mr. Kelley cited this morning, the case from the 8th Circuit, as being close in point of fact, all I could tell from the argument was that it was a case involving an accident in which there was a policy with a similar provision. It was an action on machinery insurance against accidental breakdown. Whether the breakdown of the generator was accidental or whether it occurred while the generator was undergoing an insulator breakdown test was a question for the jury. They tested it to see if its insulation would stand up; the insulation didn't stand up, and the thing was injured, and caused an accident; other damages [426] followed from there. The question was whether the generator was in use or whether it was being tested prior to being put in use, which was an excepted condition from under the terms of the policy. I think the case has no similarity in its facts at all to the case involved here.

Now, turning to what I mentally called the legal argument in this case, instead of the factual argument, and without waiving for an instant or weakening for an instant in the position I took this morning in regard to the facts, because I think that is the controlling situation here and one in which we have complete confidence, but I think your Honor is entitled to a full statement of any other positions the company might have, I don't want you to mis-

construe for a moment that I don't have complete faith and confidence in the position taken this morning, which would dispose of the case if your Honor's disposition was favorable to us, which would dispose of the necessity of passing on any of the legal questions involved.

The first thing that I want to be sure is clear is that the failure of the safety devices, or the overspeeding that was referred to of the engine, neither of those are within the terms of the policy of themselves accidents. Of course, the overspeeding of the engine is merely a result of something else, a condition that exists, and insurance could or could not, I presume, be procured for any damages caused by overspeeding [427] engines, in which event the cause of the overspeed would be wholly immaterial; all you'd have to prove would be that your engines did overspeed and caused damage, and under such a policy why, you'd be entitled to be reimbursed. It probably would be a rather hazardous type of insurance to write, because the overspeeding could be brought on by the men themselves or the operations of the machinery. At least, as far as I know, I don't know what the premiums would be, but this is not such a policy.

This is a policy which insures payment for property damaged by an accident to an assured object. Now, the accident that plaintiff is predicating his case on is the breaking of the belt, as I saw it. There was some language, as I say, in Mr. Kelley's closing portion of the argument that what really happened is that the safety devices failed, and I

rather assumed that possibly he wanted the Court to draw the inference from that that if he had shown the safety devices failed, he would be entitled to recover under the policy, but he wouldn't be. If the safety devices failed because of a breaking of a part of the device that prevented it from functioning, if the arm on the butterfly valve or the Brownell stop had broken, and that had caused it to fail, that might be classified as an accident, but neither of the two devices which are alleged to have failed could in any sense be construed as an accident, because the policy specifically [428] exempts scoring, deforming, rupturing of the packing, because that's a common occurrence. If every time it got a little thick it was held to be an accident, that would be a common thing. There was no breaking, deforming or rupturing of the Pickering safety stop. The belt is the belt that drives the governor, and the Pickering safety stop, the idler pulley, idles on the belt. If there had been a breaking of the idler pulley that caused the stop to fail to function, a breaking of the stop mechanism, or if this trigger rod had suddenly broken so it couldn't operate, you might have had a breaking, but their only theory is the inference that the screw was loosened. A mere loosening of the screw isn't a breaking. That's a thing that's changed by the men, tightened, loosened, put in whatever position they want; a loose screw is no more a broken screw than a tight screw is, so we get back to the fundamental thing, which is the breaking of the belt, which is the accidental thing they're seeking to prove.

Assuming the belt now broke with the machine running at normal speed, on the afternoon of July 3, and just this belt broke; is that a sudden and accidental breaking, now, under the definition I read this morning? I'd like to read a short one from Couch on Insurance, Section 1137, Volume V:

“Expressions, terms and phrases which are frequently used, in one combination or another, throughout definitions of the word ‘accident,’ are: An event which takes place without one’s foresight or expectation”;

Well, the evidence here is that the breaking of these belts was well within their foresight and expectation; it was a common occurrence.

“An unanticipated happening”;

Well, this wasn’t unanticipated. Maybe the exact moment, nobody could have anticipated that at 1:45 it would break, but it was anticipated that the belts would break, and it was provided for their breaking, a device was provided to take care of their breaking.

“Undesigned; undesigned contingency; something unforeseen; something which occurs unexpectedly; an act which unintentionally and involuntarily occurs; something out of the usual course of events and which happens unexpectedly and undesignedly; not according to the usual course of things; not taking place as expected; involuntary; unintended; that which suddenly happens from an unknown and unforeseen cause.”

All the common expressions in the use of the word "Accident" contain in themselves the idea of something of a casualty, as Webster says, an afflictive nature involved [430] in it. Here they recognize the frequency with which these belts break; they have a device which prevents them from doing any damage if they do break, so they have these old belts around; if one breaks they pick another one up and put one on.

"Nor shall the depletion of material in any part of the object, due to pitting, corrosion or wear, be construed as an accident." The belt does not wear down completely thin and get thinner and thinner until it is wafer-like, until they finally part. The wear goes on with the constant flexing of this portion gathered together with the metal fastener as it goes over the pulley. There's a constant flexing of the portion by the metal fastener. The belt does not get much thinner, but it depletes the strength of the belt. Put one on, it will wear out and finally break. There's no accident in that; that's foreseeable and to be expected, the same as I put an automobile tire on my automobile, and I carry insurance from the accidental breaking of that tire; I might go out the first day, hit into a sharp stone, and the tire break, and I would be covered, but if I left that tire on and ran it until in the known and anticipated course of events the tire wore out, certainly no one would say the final wearing out of that tire was a sudden and accidental breaking of it, and in that sense, as far as this belt is concerned, it seems

to us in the first instance there isn't [431] any sudden and accidental wearing out of the belt; we don't know how many; they've occurred frequently. Every time one of these belts broke do you suppose they would consider they had an accident to an insured object, and send a bill to the insurance company for a new belt? We'd simply be paying the maintenance charges on their belting, "We need another \$5.00 for a new belt"; that I think is perfectly absurd and perfectly apparent, that nobody would consider the belt itself breaking as an accidental thing. It was an expected thing.

Now, I tried to point out this morning that of course you could have an accidental breaking of the belt; if you put a new belt on there, a strong belt, and somebody went through and we'll say had a crowbar or a piece of something that hit the belt, and that sudden and unexpected pressure or force upon the belt caused it to break, I think you'd classify that as a sudden and accidental breaking. You might have a new belt, and if you could show you put a new belt on, and the belt had a sudden and latent defect that wasn't known or expected, and that caused the belt to break, there again you might have what would be classed as an accidental breaking. Here there's no proof we put a new belt on and it was in good condition and somebody hit it or it had a latent defect. All they said "We have them hanging around, and whenever we change a belt we go over and put one on." Why? Because they've got a device installed to keep [432] them from having any serious results when that happens.

The Court: Under your construction of this policy, then, this insured was covered only for accidental breakage of the engine or parts of it by violent external means, is that correct?

Mr. Paine: Oh, no——

The Court: Well, every part of an engine that isn't absolutely new is partly worn, so under your theory there couldn't be an accidental internal damage of any part unless it was absolutely new, because it would be worn, and that would be responsible for its giving 'way.

Mr. Paine: No, as I say, if it wasn't usual and expected. If this flywheel had broken, maybe it was worn, it isn't a readily expendable part; had the main drive wheel broken, had any of the other things on the engine broken from the steam pressure on it, I'd say it was a sudden and accidental breaking, unless it was in the nature as shown here, that it was an expendable part that was usual and expected that it would wear out, and then they could come in and show that the breaking of that belt was an accidental one, not one just from continuous use, the burden being on them, and they could come in and show that, then they could show that they had an accidental breaking of that belt.

Now then, assuming, however, that there was an accidental breaking of the belt, we feel that the damage was not [433] directly caused by such accident. Now, the authorities are to the effect that "directly caused" as used in insurance policies such as this, are synonymous with "proximately caused" in con-

nection with acts of negligence, and where you're attempting to determine the proximate cause of an ensuing result. It is said in the case of *Dixie Pine Products Co. vs. Maryland Casualty Co.*, 133 F. 2d 583:

“It is well settled that the words ‘direct cause’ ordinarily are synonymous in legal intendment with ‘proximate cause,’ a rule applicable to causes involving the construction of an insurance policy.”

In other words, the courts have said that where you use it instead of using the words “proximately caused,” “directly damaged” and “directly caused” are in effect the same thing. That means that the chain of causation which is started by the initial breaking of some portion of the engine, assuming for the sake of this argument only that the belt broke first, and it was a new belt, and its breaking was fortuitous or accidental, that that breaking then must be the first in the line of causation to arrive at the ultimate result of the damage; that causation must follow through directly. As an example, you put up a line of dominoes and you hit this domino and it hits the next one, and so on; the last domino is caused by the blow on the first domino, because it has followed itself [434] through, but if there are any independent intervening causes, forces set up which intervene there to break that chain of direct causation, they make the original cause a remote or not a proximate cause.

Now, I agree with Mr. Kelley; we've done considerable research ourselves trying to find something on all fours with this case, and haven't been able to find anything too close on it. This Dixie Pine case from which I read this definition is, it seems to me, an analogous case on its facts; its ultimate conclusions—well, briefly, this is what the situation was: The Dixie Pine Company was a manufacturing company making some type of product in which they used a very highly dangerous and inflammable solvent which was carried through pipes in their manufacturing plant, and they had a policy of insurance against breakage similar to the one here. The pipes broke; there wasn't any question about that. The solvent escaped from the pipes; it was a gaseous or semi-gaseous type of material, and then over quite a little period of time the escaping gas spread to a boiler room where there was a fire enclosed in the boilers, and when the escaping gas came in contact with the fire it lit the gas and an explosion followed, and the loss was very extensive, and the question was whether the rupture of the pipe which was covered under their policy was the direct cause of the resulting explosion.

The court held in that case that it became a question of [435] fact for the jury as to whether or not proper care and proper efforts had been made to extinguish and get this fire out of the way of the spreading gas which it was known would cause an explosion did it come in contact with the fire; that if those efforts were not sufficient, or were negligent,

then there would be an intervening cause, that is, the failure to extinguish the fire and prevent the gas from reaching it, which would be the proximate cause of the explosion, and not the rupturing of the pipe which had merely released the gas in the first instance.

The case went up to the Circuit Court of Appeals and was reversed on that question, that it was a jury question, went back to the jury, went to the Circuit Court of Appeals the second time, and on the second time the court said that the facts adduced by the plaintiff showing that there was no fault in their inability to keep the gas from reaching the fire, and that therefore there was a direct cause between them, but had the facts been otherwise, there would have been an intervening cause which would have made the rupturing of the pipe in the plant a remote cause and not a direct cause directly responsible for the damage which resulted as a result of the explosion.

There's a fairly early case of *Cole vs. German Savings & Loan Society*, 124 Fed. 113, where a woman was injured in stepping into an unlighted elevator shaft, and a door was [436] open, and the question was that some strange child who had been permitted to come upon the premises had stepped in and opened the door or invited her to step into the shaft, and that the leaving of the door unlocked and the failure to light the premises were not the direct cause of her injury, but it was the intervening act of a third party which had permit-

ted this to take place. That type of case has been somewhat elaborated and distinguished on the theory that if in leaving your premises in that way, and there was evidence in this case, too, that the defendant knew that children or uninvited persons were around, and might do such a thing, then that becomes a foreseeable act in the chain, and still wouldn't keep them from being the proximate cause of the accident. There are a number of definitions cited as to what the remote cause or the proximate cause are:

“The proximate cause is the efficient cause, the one that necessarily sets the other causes in operation. The causes that are merely incidental, or instruments of a superior or controlling agency, are not the proximate causes and the responsible ones.”

“The remote cause is that cause which some independent force merely took advantage of to accomplish something not the probable or natural effect thereof. * * The casual [437] connection between the negligence and the hurt is interrupted by the interposition of an independent human agency; and, as Mr. Wharton expresses the thought, ‘the intervener acts as a non-conductor, and insulates the negligence.’ The test is: Was the intervening efficient cause a new and independent force, acting in and of itself in causing the injury and superseding the original wrong complained of, so as to make it remote in the chain of causation, although

it may have remotely contributed to the injury as an occasion or condition?"

Now, then, just one more before I discuss it fully many on the facts, from the *Harvard Law Review*, Volume XXXIII, Number 5, there's a very interesting article, "The Proximate Consequences of an Act." The gist of it, after discussing many of the phrases and the early history of the doctrine of proximate cause, is:

"If, on the other hand, where defendant's active force has come to rest in a position of apparent safety, the court will follow it no longer; if some new force later combines with this condition to create harm, the result is remote from the defendant's act." [438]

Now, applying this language to this situation, as I see it, the defendant's active force in this case, which would be considered to be the breaking of the belt, that's the first direct active force, is the breaking of the belt, has come to rest in a position of apparent safety. Well, with the breaking of the belt what has happened? The rider pulley riding on the belt has dropped down. That's all that the breaking of the belt is intended to do; it's intended to release the rider pulley, and when the belt is broken and has released the rider pulley, the effect of the breaking of the belt has come to a position of apparent safety. The rider pulley is built, designed and constructed so that when the rider pulley drops, a condition of safety has been created. The court will

then follow it no longer, and if some new force later combines with this condition to create harm, the result is remote from defendant's act.

Now, what happened here? According to their own theory the rider pulley dropped; the belt's force had expended itself, as far as that's concerned; it had dropped the rider pulley. Up in the trigger arm of the safety device a screw had come loose or was loosened or something had happened to the screw, which thereupon prevented the safety device from operating. Certainly the belt breaking didn't prevent the safety device from operating. The belt breaking set the safety device in the process of operation. It was the intervening [439] act of failure of the set screw to properly bite into the arm or do what it was supposed to do, which is not a breaking within the terms of the policy, and not an accident within the terms of the policy. It's a mere matter of maintenance or negligence, a failure to maintain on the part of the company's officials or workmen. Mr. Wheeler said it's a rather hard place to get at and check and keep in proper condition, and we don't do it as often as we should. That's about his language as I remember it, but it was their duty to go around and keep this screw in a tightened condition. The screw wasn't broken under the terms of the policy, and yet it was, if we're to believe their statement, an independent intervening condition or act which prevented this Pickering safety device from operating, under their theory.

The Court: Under that theory it seems to me that if an insurance company can get the insured,

as they did here, to install a safety device for a part, then the insured could never recover for an accidental breaking of that part, because if the safety device worked, there would be no damage, and if it didn't work, there would be no proximate cause; is that the result of your reasoning?

Mr. Paine: No; they might not be able to recover for the breaking of a belt, but if the device was properly maintained and the safety device broke, this trigger arm had broken, or the ratchet had broken, or the spring up above, [440] if that spring had broken and that was the failure of the safety device to operate, why, you would have had a breaking of that part, which would have been the direct cause of the following damages, but if the failure of the safety device is not due to breaking, we don't insure against it any more than any other part of that machine may cause damage.

Supposing this had operated, and the question was on the failure of the butterfly valve to stop this machine; if that failure were due to the improper setting and maintenance of the valve in its packing, they would have damage to their machine and their machines upstairs, but it wouldn't be covered under our policy, which covers them from breaking. Now, had the damage resulted from the weight on the butterfly arm breaking off, or a portion of the butterfly valve breaking, and that had resulted in damage, then they would be covered under our policy, but they aren't covered unless there is a breaking, and if an intervening cause is

a cause from mere negligent maintenance without any breakage, the mere fact that it was preceded by something which broke, but which didn't cause the failure of the device to operate, why, there's no room for putting that liability back onto us.

The Court: You're arguing, then, that the negative matter of the failure of the safety device to operate constitutes an independent intervening cause; that's your position?

Mr. Paine: That's our position in that regard.

As this [441] article goes on to say:

"The form of rule above stated is believed really to state the true distinction and the one actually enforced by the courts. * * * A more accurate phrase which is gaining in use is that the intervening force, unless it is to make the result remote, must be foreseeable."

By that is meant that if you start the chain of causation going and it's foreseeable that's going to follow through several different steps, then you have a direct cause. If something intervenes that isn't foreseeable, you have a remote cause.

Now then, you start this chain of events going by breaking the belt. What is the foreseeable result that's going to follow? The trigger arm is going to drop. That's foreseeable and expected. That's what the rider pulley is there for. The rider pulley is set to function to hit the trigger pin, and the trigger pin is going to operate on the pole, and the pole is going to turn the spring, and the spring is

going to drop the valve, and Rube Goldberg is going to get his money for the invention, but that's all the foreseeable events. In other words, the breaking of the belt, if the valve closed, and in closing damaged something, we'll say that that forced the pressure, steam, the sudden closing [442] of the valve caused too much back pressure on the steam, and that ruptured a pipe; that would be directly a result of the breaking of the belt, because that would be right foreseeable, that is, you would foresee that the belt would release the pulley, the pulley would hit the trigger finger, the trigger finger would turn this portion of it, that in turn would release the spring that would drop the valve, and if that did the damage then the breaking of the belt would be the direct cause of the damage.

What happens here is an intervening cause which is not foreseeable takes place. The belt breaks; you foresee the next stop, the dropping of the rider pulley, the pushing up of the trigger lever, and then an intervening unforeseeable and unexpected force comes in; there's a loose screw, and instead of this thing turning as it was expected and designed and intended to turn, it fails, and you then have an intervening, unforeseeable and unexpected cause entering into it, which then becomes the direct cause of the damage which follows.

That in its essence is the doctrine of proximate cause as near as I can figure it out. Of course there are a world of cases, automobiles, and all sorts of things, on it. I found nothing very close, but it is

stated that the real test is the foreseeableness of the causation, of the original cause following through, just as the first simple example, [443] you hit the first domino and you know from the way they're spaced that that force will tip the next domino over, and that they're so close that it will follow on down. If instead of that which was intended, down along the line somebody removed a domino, or it fell, and that force never continued to the end where that force was supposed to arrive to prevent something from happening, it wouldn't be the hitting of the first domino which caused the damage when the last domino didn't fall; it would be the removal of an intervening domino, because that would be the unforeseeable and unexpected thing that stepped in there to prevent the acting force from carrying through and accomplishing the purpose for which it was designed.

Here you've got the situation where you hit the first domino and the last domino falls; the purpose of that sequence is to prevent damage. Now, you hit the first domino; that is, you break the belt. It goes so far, and then due to something that has intervened and broken up the setup of the chain, it fails to be able to go through to the end and accomplish the result it was designed to accomplish. No one can say legally or logically that the breaking, or the damage which is caused by the failure of the last domino to fall over, was caused by the first domino being hit, because that was designed and intended that the last domino should fall. The damage

which was caused was by [444] the failure, or the removal of a domino in the row so that the active force set in motion did not get through to the place where it was designed to arrive, and it ceased to be a direct cause, but a remote cause of this process, and doesn't carry through to the engine; it doesn't carry through to the damage that ultimately was caused when it got through.

Now, my time is nearly up. I do want to call your Honor's attention to the fact that there are two portions of this policy, namely the original policy which covers property directly damaged by such accident, then there is endorsement number 1, which covers for use and occupancy, which is worded somewhat dissimilar from the first one, and I think there is a distinction that I should call to your Honor's attention. That policy is worded "caused solely," instead of directly, "caused solely by an accident to an object covered by the schedules," and on the back, the definition of object and accident as used in schedule 6 applies to this, so that here you have the question of the use and occupancy, which means that they will pay for each day of total prevention of business on the premises, caused solely by an accident to an object. Now there I think the distinction is twofold; it's a little stronger, more strongly expressed than the first, that if you might feel that the breaking of the belt and the loosening of the screw were both concurrent causes, rather than one being the proximate and one being the remote, that [445] they at least were concurrent

causes, then the use and occupancy provisions and the coverage would not be covered, because it is certainly not due solely to the breaking of the belt.

Also I think another part subject to interpretation is that the loss for each day's prevention of the business caused solely by an accident to an object means that the time that they are unable to carry on their business because of the accident to the object, in other words, the time necessary to repair the insured object that keeps them from operating. Well, now, in this case of course that is immaterial. The time to repair the insured object was only a matter of a minute or two; all that was necessary was to put back a belt, which was done, and the object operated; that is, at that time there apparently was no loose screw and they didn't even need to have the screw replaced because it proceeded to operate. Now, the basis of their loss of use and occupancy was the time it took them to replace a lot of un-insured machinery in the premises, which of course they could have had insured for breaking and loss of business; if they had had this same type of policy on the line shafting there wouldn't have been any question about it, the line shafting would have been paid for and the time out of business would have both been paid for. It didn't make any difference what caused the breaking. There might have been— [446] well, negligence on their part, but that would all have been paid for and the use and occupancy would have been paid for, because you would have had time out to repair insured objects that was a loss at the time of the accident, but they weren't worried about the

pulleys and the shafting; they carried their insurance on the engine, and the damage to the engine at the most was a dollar and a half, or whatever it cost to replace the belt, and the use and occupancy from the damage to the engine was a matter of minutes, and not a matter of a month, such as their bill totals, from the 3rd to the 29th of July; so that purely on the legal basis I think the company is entitled to recover, but I want to emphasize again in closing that primarily we feel that the factual situation that I argued this morning is such as shows conclusively that the breaking of the belt occurred at the close of the sequence, or very near the close of the sequence of events, and of course could not in any way be responsible for the damage which occurred prior to it, and caused the closing down or the bringing down of the machine to an idling speed, and there's no question then necessary for interpretation of the policy or any discussion of the legal rules, but I felt I should present to your Honor that subsequent phase of it in case your Honor might perchance differ on the factual basis of the case, and if so, I strongly contend and feel there isn't any real doubt on the legal interpretation of it, that the [447] breaking of the belt was not an accident as considered under the policy, but was the wearing out of an expendable article. Had that alone occurred no claim would have been entered. It was not directly responsible for the resulting damage; that intervening force was the failure of both of these safety devices, the butterfly valve and the Pickering stop, to operate—pardon me, the failure of the Brownell

stop on the wheel. They don't stop this machine by any of the devices they have on it. They stop it by the fortuitous accident of a piece of stray belting hitting it, so the failure of all their devices, none of which broke in the sense covered in the policy, were intervening causes and set up an intervening condition that was the direct cause of the damage, and made any breaking of the belt an indirect or remote cause.

The Court: I think you will have on that basis five extra minutes if you care to use them, Mr. Kelley.

PLAINTIFF'S FINAL ARGUMENT

Mr. Kelley: Well, I haven't any set notion of the time it will take me, and I don't want to inconvenience or impose on the Court.

At the onset, I might say that I don't feel there's any necessity to use extra time to cite to the Court familiar horn-book law as to proximate cause, and in the second place, I don't think the Court is interested in any metaphysical [448] discussion of dominoes or anything else; what we're interested in is keeping our eye on the squirrel in this case. Before I advert to a few things Mr. Paine deems necessary to take up, I do want to say to your Honor that if I have not answered your Honor's question this morning, I felt that during the course of my argument I did, but in case I did not, I want the Court to know squarely my position, the plaintiff's position, in answer to your Honor's first question, which I felt went to the very heart of this lawsuit. As I

recall, you inquired "How do you know the Brownell overspeed stop didn't function normally?" I say to your Honor in addition to Beguelin's testimony that the safety chain arm was broke, in addition to the two men upstairs saying that they pulled the handle over there in exhibit 9 and the machine seemed to increase in speed, I say to your Honor directly this is our answer: Because the speed of the machine, the line shaft, and the pulleys, reached speeds which were not possible if the overspeed had functioned as it did under tests both before and after this accident. I call your Honor's attention to the testimony of the master mechanic, Beguelin, in that respect, a witness who was lauded by Mr. Paine as much as some of the others were vilified. He testified that he had overspeeded that engine to the tripping point of the Brownell stop some two or three months before the accident. He testified he had done that while it was connected with the [449] main line shaft.

He testified furthermore that all the material which was damaged by the accident of July 3, 1946, was running at the time that he made that overspeed test. Furthermore, his testimony coupled with Mr. Black's was that the Brownell, and this has never been controverted, disputed or denied, that the Brownell overspeed stop was set at 700 feet lineal for the paper, paper speed, to permit the practical operation of the standard newsprint if the mill were to run that. Now, if your Honor pleases, going to the second inquiry, I don't know if it was an in-

quiry by the Court, but at least an observation, you again went to one of the most salient points in the lawsuit, namely the testimony of Mr. Olinger, who testified that on a number of occasions on July 5 he had tried to work that idler pulley, and it hadn't worked automatically. Your Honor said "Well, apparently the set screw worked one time and apparently it didn't another," and I say to your Honor that's exactly what the evidence shows. I say to your Honor it is possible for a set screw to drag, to slip one time and hold another when it is perfectly tight.

Now, if your Honor pleases, it's very easy, it's very easy to cast aspersions at someone like Mr. Wheeler. I'm going to try to try the lawsuit, not the lawyers, but I'm within my rights, I feel strongly on it, that when any witness who sat here as Mr. Wheeler did, and your Honor observed [450] his demeanor and his reactions on the stand, and your Honor as an experienced trier of the fact and as an experienced trial lawyer before you went on the bench knows that there were many things that came out in that cross-examination that Wheeler testified to that he had never even gone over with his counsel before, and your Honor is fully cognizant of the fact that for seventeen pages in the record, by one of the most adroit and skillful cross-examiners at the bar, Mr. Wheeler told the story and told the truth, and I know your Honor feels that he was telling the truth.

Now, Mr. Olinger told the truth. The answer is simple. He didn't ask Mr. Wheeler what position he found it in, when he worked with Mr. Wheeler a couple of days after the accident, and Mr. Wheeler didn't tell him. Apparently he wasn't asked. Apparently he didn't tell anybody, there isn't any question about that. There isn't any question that Mr. McKeon, who came out here from the east, his advent out here changed the whole picture, the whole disposition of this insurance company. There isn't any question that after the session of August 4 there was still one question left to be unanswered, or to be answered—what was the condition of the governor after the wreck, that is, as far as the Inland Empire Paper Company was concerned, and we have their letter that I had them produce in open court, which they have from Mr. Black, which indicates when Mr. McKeon was here [451] there was one question left to be answered, that is, what was the condition of the governor after the wreck.

Now, the Hartford, or I'd better say Mr. McKeon, who came out here from the Hartford, wouldn't take the investigation of Olinger and they wouldn't take the investigation of Mr. Fullmer on that point. Now, since this morning's discussion I have checked the record with respect to what Mr. Fullmer had to say. Now, Mr. Fullmer, the representative of the Hartford, who was the first one on hand, or the second, he said that he looked at the Pickering stop, I believe it was July 7; in any event, a day or two after, he looked at the Pickering

stop. He said "The arm that trips the mechanism I could move," and he says "It was slightly loose." There's testimony in the record that I didn't call to your Honor's attention this morning, but I have checked and double checked it, and it's in the record. Now, instead of vilifying Mr. Wheeler, let's turn to his own testimony. Perhaps there's reason for Mr. Wheeler not running around telling Mr. Fullmer and telling Mr. Olinger at the time. He would have told him had Mr. Olinger asked him. Mr. Wheeler, your Honor will find it in his testimony, Mr. Wheeler testified, and I think it is indicative of the truth and veracity of the old gentleman when he testified in part on cross-examination: "Question: And do you go around frequently and tighten it up, keep it tight? Answer: Well, probably not as often as we should [352] have. I'll admit that on my own part, but those machines are in constant operation twenty-four hours a day, and a good deal of the time seven days a week."

I agree with council, human frailty being what it is, it may be that Mr. Wheeler is one of those rare people who just keeps his mouth shut when he should and speaks when he's asked. It may be that he was fearful some blame would attach to him, I don't know, but the point is, he told the full and complete story, and he told it under cross-examination, and he wasn't led by any suggestive questioning of counsel.

Now, with your Honor's permission, I want to ask, respectfully ask, that the Court will read that testimony of Mr. Wheeler which is the most impor-

tant in this case. I would impose upon the Court to ask that your Honor read it in toto. I know that you'll recollect all the testimony; I know that you'll recollect the testimony of Mr. Olinger on the point.

Now, coming to Mr. Paine's closing remarks, a remark that he made this morning, if there had been no automatic device on the Pickering governor and if the belt broke, that would be covered. Well, I stand with him on that, and I say "Amen," and I call your Honor's attention again to this case of *Ocean Accident & Guarantee vs. Penick & Ford*, and I don't want to arrogate to myself an exhaustive search of the law [453] and tell the Court that there is no other book on the point, but I simply say to your Honor that I have worked very hard, and I fail to find any other case that is as appropriate as this case. If it were contradictory to the plaintiff's case I'd cite it to your Honor.

In this *Penick* case the plaintiff brought an action, just as we are, on policy of machinery insurance issued by the defendant whereby it agreed to indemnify the plaintiff against loss from breakdown of certain machinery specified in the policy. I read the phraseology in the opinion of the Circuit Court of Appeals for the 8th Circuit, and I know your Honor checked the phraseology of the policy in the case at bar, and it's identical. In this *Penick* case the answer denied all the allegations of the petition, as all defendant insurance companies apparently do in a case like this, except to allege the issuance of the policy and the making of a proof of loss, but in that case they allege affirmatively that

the injury occurred while it was undergoing an insulation breakdown test. Some time during the day the generator was being operated it was decided to shut it down and call in the General Electric Company. The generator was then dismantled and a rotor was taken out and placed on blocks on the floor of the powerhouse, and when it was removed from the generator and placed on the floor it was inspected to ascertain if the weak spot in the insulation which a test [454] had indicated could be located, and just as in the case at bar, there was a breaking of a strap; it wasn't the same kind of a strap, no, it was a copper strap in the generator which came out of one of the slots on its way back to thread back into another slot. There was a rupture in the copper strap.

Your Honor understands why I cited that case this morning. Perhaps I should have emphasized it more. If I failed, then I seek to remedy it now. Counsel for the insurance company in that case stated in their briefs, which I have, and it's recited in the opinion of the Court, that one of the principal questions was whether or not the occurrence in question constituted an accident within the meaning of the policy, and that is, after all, aside from the metaphysical talk about dominoes and other extraneous matter, that's all Mr. Paine's been arguing this afternoon, assuming the belt was good, and assuming the break—under the state of the record, how could anyone assume otherwise? Fullmer said he cut off the end of the belt, and he cut it off to send it to Hartford. Don't you suppose if that belt

had been worn out or deteriorated, don't you suppose the Hartford would have had one or two experts here to testify it was weak and deteriorated? Of course they would. Assuming that piece, Exhibit 12, is the identical belt, is there any evidence of wear and decay on it? They might say we haven't got the whole belt. Is that our fault? The insurance company cut it off. [455] What part of the belt is in the record doesn't show any appearance of wear or decay, and Mr. Fullmer wouldn't so testify.

Now, in going back to this Ocean Accident case, the court said there was substantial evidence introduced by the plaintiff tending to support its claim that before the smoke test was applied there had occurred a breaking of the strap, and a fusing of the end of it to the rotor, and that this occurrence immediately caused some impairment of function. The breaking of the strap in the Penick case, and it is most appropriate in the case at bar—"This evidence, if believed by the jury"—if your Honor believes this belt was broken and that was the initial cause, and it was the "but-for" as we state, that caused the damage, then the court says:

"This evidence, if believed by the jury, warranted a finding of an accidental breakdown. We examine the record on this question for the purpose of determining whether or not there was substantial evidence, and we must accept as true the evidence supporting plaintiff's cause of action, and it is entitled to such reasonable favorable inferences as may fairly be drawn therefrom." (Citing cases.)

Then they say in that connection: [456]

“There is no evidence of physical facts or of scientific principle conclusively establishing that the separation of the strap and the fusing of the ends to the rotor must have taken place when the smoke test was applied. Whether the smoke test produced the injury was, we think, a question for the jury.”

And we maintain whether or no the breaking of this belt on the Pickering governor, was a question of fact which your Honor will decide as a trier of fact in place of the jury, and I might say parenthetically that it was with purpose, deliberate intent, that this suit was started first as a non-jury trial in the Superior Court and then removed to Federal Court, and no demand for jury was ever made. Why? Because we felt that a Court trained to analyze testimony, I don't attempt myself to arrogate any skill in these cases, undoubtedly counsel for the defendant can grasp a point in this field far more readily than I, but the witnesses have told the logical sequence, and I realize this, that a court will not be confused by the sand in the air that a jury would.

The court said:

“There was expert testimony based upon a hypothetical question, to the effect that the break in this strap would occur instantly. In determining the [457] meaning of the term ‘accident’ as used in this policy”——

and permit me to interrupt, you will remember the definition is the same as we have;

“——the question is not what it might mean to a scientist or one skilled in the subject involved, but what it means to the average man.” (Citing more Federal authority in the 8th Circuit.) “Unless some technical meaning was obviously intended, the words ‘accident’ and ‘accidental’ should be given the meaning they impart in common speech.” (Citing more authority.) “The testimony of the expert witness Drabelle that the vibration shown by the testimony”——

and your Honor will recall that in this case at bar on cross-examination the witness Wheeler testified “Yes, there was vibration that could shake that set screw loose”——

“——was not by design either of the maker of the machine or of the plaintiff and that it was not normal, expected or anticipated, but that it caused the break in the strap, is sufficient, we think, to show that there was an accident.”

The defendant insurance company in this Penick case made [458] the same contention as they’re making in the case at bar, that there was no impairment of function. In this Penick case they say:

“The policy provides that this impairment must manifest itself ‘by immediately impairing the function of the object’ ”——

that's the terms of our policy, and must necessitate "repair or replacement before its functions are restored."

The court goes on to say in this case:

"Assuming, as we must, the existence of the break and that the break was accidental, the testimony conclusively shows that an impairment of function necessarily followed."

and that's the case at bar. Now, if your Honor pleases, I thought the third question that you addressed to counsel likewise went to the very heart of this lawsuit. You said "If the Pickering stop functioned" and they now maintain that it did, "If the Pickering stop functioned, why didn't the engine go to an idling speed?" I listened carefully. I could find no answer in either the morning argument or the afternoon argument of counsel, who contented himself by just making the bald statement that the Pickering governor was functioning.

Now, if your Honor pleases, it apparently is conceded that if the Pickering governor was not functioning there [459] should be recovery. I confess I'm at loss to understand the mental gymnastics which calls to your Honor's attention that we have to prove that the breaking of the belt disconnected the governing device. We don't have to prove any such thing. We have to prove that the breaking of the belt in the first place was the "but-for" but for which this accident would never have occurred.

He says we have to prove the engine increased speed. Their own witness Fullmer testified that the

tests resulted in an increase of speed. Now, if your Honor pleases, with respect to Mr. Wheeler's testimony, I just want to turn the same remark that counsel made concerning the employees of the company upstairs. He said they couldn't foresee a lawsuit at the time, so of course their actions were spontaneous and they pulled that safety. Now, how would Wheeler, a stationary engineer, foresee at the time that there was going to be a lawsuit, when on July 5 Mr. Olinger came and made the tests with him? Do you suppose for one minute, as a matter of common sense, that Wheeler secretly held this knowledge to himself because he figured that 'way in a year or two there would be a lawsuit on this policy? That's preposterous.

Now, if your Honor pleases, there is no evidence of wearing out of the belt. There isn't any wearing out of the belt, and as your Honor put the question, there couldn't be, under his theory, any accidental breaking here unless a part [460] was new. In other words, viewing it, as we say "reductio ad absurdum" under their theory the insurance policy didn't insure, under their theory they're only insured against the breaking of the strongest part of the Sumner steam engine, i.e.; such as the fly-wheel pulley, but that isn't the case. The policy also insures against the breaking of the weakest part, such as the governor belt, and I say to your Honor a chain is no stronger than its weakest link. If the governor isn't a part of that steam engine, if the belt isn't a part of that governor, why, then my argument falls to nothing, but that is not the case.

Now, according to an insurer's theory, the butterfly valve was controlled by the Brownell overspeed, and the safety hand chain, and if the Brownell had not worked, and if the hand safety chain hadn't been used, the insurer wouldn't pay, simply because all the control devices were not used. In other words, if the hypothetical case Mr. Paine put, if someone had not braved the flying debris to turn off the butterfly valve by hand, assuming that it hadn't tripped, as is most probable, and the weight of the evidence indicates, by the belt being in such juxta-position with the trigger, within a half an inch, assuming for the nonce that didn't happen, under their theory the engine itself could have exploded and yet the insurer would have escaped payment because the strongest safety device hadn't been tripped. [461]

The policy doesn't say that. If it did it would be against public policy, because it would invite deliberate fraud on the part of the insurer. They could always be recommending these safety arms to be put on, and its inspectors could be instructed to adjust the overspeed stop at such a high point that it would never be reached before the engine exploded. Now, that's where you get to under their theory, and that isn't the case at bar.

If your Honor pleases, Mr. Wheeler's testimony, Mr. Olinger's, Mr. Fullmer's testimony, and this Ocean Accident case, should resolve this case as prayed for. I purposely refrain now from being drawn into a by-pass upon the use and occupancy provisions. We've stipulated on the amount of dam-

ages; we've got plaintiff's exhibit 14; I don't intend for one thirty seconds to weaken our strong position by discussion on damages. We've stipulated on that. I'm not going to get into that. I say there is liability, and we've stipulated as to what the damage should be. I even went to the precaution to demand that debit item, so the court could have in detail what those items were.

RULING OF THE COURT

The Court: It has never seemed to me necessary or very helpful to anybody to keep everyone in suspense in a case of this kind throughout long introductory remarks by the Court, so I'll say it is the conclusion of the Court that the plaintiff has failed to maintain the burden of proving that the damage shown to the machinery in this case comes within the terms of the policy of insurance.

I don't propose to make any extended or exhaustive review of the facts or the evidence in this case. I'll merely try to say enough to give you and perhaps the Appellate Court the basis for my conclusion, and enable you to draft the findings of fact that will be entered by the Court in this case. I have often instructed juries that they should keep their minds free and open and not reach any conclusion as to the facts until the case is submitted to them. I've found that it isn't so easy to follow that instruction when I have to act as the trier of the facts, but I can say truthfully that I have done it in this case.

I've been greatly puzzled in this case as to how this accident could possibly happen in the way that the evidence, the physical facts, seemed to indicate that it did, and I was rather in a state of uncertainty until the very conclusion of the case. After giving it a good deal of thought I have come to the conclusion that the probabilities [463] weigh, it seems to me, very heavily in favor of the defendant in the case on the facts as to just how this damage originated and what was its cause.

Aside from the legal theories advanced by counsel for the defendant, according to their own theory of the case, in order to prevail, the plaintiff would have to prove at least that the Pickering governor belt broke; that as a result of that breaking the number 4 engine speeded up, and as has been said here, "ran away"; and that speed accelerated to the point where it was communicated through the main drive belt to the line shaft, and the machinery attached to the line shaft, on the upper floor, reached a speed that caused the pulleys to disintegrate through centrifugal force, or as has been said here, caused the pulleys to explode.

Now, under that theory of the case it seems to me that that runs counter to and collides with a number of the physical facts here, the probabilities to be deduced from the physical facts, or from facts that are uncontroverted, or at least have been proven convincingly to the satisfaction of the Court. We have to assume that if that happened, that three separate and to a certain extent independently operated safety devices failed to work. First of all

we have to assume that the safety stop on the Pickering governor, operated by the little pulley that is in contact normally with the belt that broke, that that failed to work. There [464] is, true, evidence here of Mr. Wheeler and Mr. Janeczek that shortly after the accident they observed the engine and saw that that stop had not operated, but taking that testimony at its full value, if that happened, if the Pickering stop failed to work, then of course the governor would be inoperative, as has been said, the balls would fall down and the steam vent would be wide open, the steam control, and the engine would proceed to run away.

If it did so, then of course when it reached the speed at which the Brownell stop was set on the flywheel, and it's a very simply operating device, it is simply a weight held off by a spring; when centrifugal force overcomes the resistance of the spring the arm goes out and trips the trip that is nearby there, and will be reached by the protruding arm when that has occurred. It's a very simply tripping device that even I can understand, and sometimes I feel that I'm so lacking in mechanical ability that the mechanics of a wheelbarrow almost appall me, but I can understand that trip. Now, why didn't it operate? It was set to operate before it would reach any speed that would cause the pulleys to explode, or anywhere near that tremendous speed.

There hasn't been any explanation as to why it didn't work. There has been shown to have been no defect in it. It hasn't been shown to be out of

order. Every time, as I recall, there was any evidence about its testing, it worked, [465] both before and after the accident; so we have to assume that didn't work. We also have to assume, which has been pointed out here as rather improbable, to me, that although this hand safety stop had been set up, connected with a chain to the butterfly valve extending up into the upper room, where the paper machine was operating, a convenient handle in the floor, the men evidently had been instructed about it, knew it was there, and when this evidence of speeding was noticeable they ran over and they pulled that, and no doubt pulled it violently and in a way that should have made it work. Now, we have to assume that that didn't work, and then we have another point here.

It's true that these tests that were conducted by the representatives of the insurance company were over a period of time after the accident, extending up into August, but so far as the matters which they were examining in their tests are concerned, there hasn't been shown to have been any change in the particular item or device from the time of the accident until the test was made, and their tests indicated both by an examination in the shop of the butterfly valve and by putting it back on the engine and operating it, that the butterfly valve at the time of this occurrence was in such a defective condition that it not only would not stop the engine, but wouldn't even reduce its speed to the idling speed, because of the packing having [466] cor-

roded or something of the sort, the little damper that operated in the pipe didn't work, didn't close all the way down, there was three quarters of an inch or so of play when it was supposed to be closed, and both from a standpoint of examination in the shop and by actual test operation of it when it was put back on the engine, when the butterfly valve was supposed to be closed the engine would continue to accelerate.

Now, both the Brownell stop and the hand stop up above operated on this butterfly valve. If that's the only thing that tripped, the Brownell or the one upstairs, either of them, the engine wouldn't have come to an idling speed; it would have continued to run away, yet the undisputed evidence is that when the first employees of the plaintiff reached the engine after this accident, the engine was idling. It was not stopped, but was idling, as has been pointed out here, with practically all of the load removed, because by that time the whole shaft had been thrown out, the main drive belt was off of the driven pulley, at least, and there wasn't any load on the engine, it was running free.

Now, I realize that a conclusion reached from the logic of those facts runs counter to the testimony of two of the witnesses here, Mr. Janecek and Mr. Wheeler. Mr. Janecek seems to have been rather slighted in the argument, to a certain extent. I see no great difference between Mr. [467] Janecek and Mr. Wheeler except that the interval was a little longer during which they didn't report what

they undoubtedly now feel that they had seen at the time of the accident. I think Mr. Janeczek is an honest witness, but I know what lapse of time and self-interest, and wanting to believe a thing a certain way, will do to fallible human memory when we try to reconstruct something that has happened in the past, and it is just my view of it that because of the what seems to me unanswerable logic of the facts that I have detailed here, that both Mr. Janeczek and Mr. Wheeler have just let themselves indulge in some wishful thinking, and must have been mistaken about the situation, or the position of the Pickering stop at the time they observed it.

I think that's probably all that I need to say. I can say this, that I'm convinced that neither side in this case, I think this case has been very fairly and very ably presented from both side, and I don't think either side has either fabricated or attempted to fabricate any evidence here. Of course, I make allowance on both sides, because we have no disinterested witnesses except possibly Mr. MacCamy, I would say Mr. MacCamy is, but as I say, I don't think there's any disposition here to try to fabricate evidence. I think both sides could have done a better job if they tried to fabricate it.

Mr. Paine: I think if we had put our minds to fabrication [468] we could have improved it.

The Court: Exception, of course, is allowed to the plaintiff if it is necessary, and the matter of settling the findings can be taken up in the regular way.

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held on October 7, 8, 9, and 10, 1947, at Spokane, Washington.

That the above and foregoing, consisting of pages numbered consecutively from 1 to 449, contains a full, true and accurate transcript of the proceedings had therein, including all objections and the court's rulings thereon.

Dated this 6th day of February, 1948.

/s/ STANLEY D. TAYLOR,
Official Court Reporter.

PLAINTIFF'S EXHIBIT No. 14

Inland Empire Paper Company
Manufacturers

Millwood, Wash.

September 17, 1946.

Telegraphic Address: Spokane, Washington.

Hartford Steam Boiler Ins. & Ins. Co.

707 Artie Building

Seattle, Washington

Attention: Mr. Fred Fullmer

Re: Policy #97-743

Gentlemen:

In accordance with your request we enclosed herewith our Claim for Loss which occurred July 3, 1946, under this policy.

Please give your usual prompt attention to this claim.

Very truly yours,

INLAND EMPIRE PAPER
COMPANY,

By C. A. BUCKLAND,
General Manager.

CAB/h

Encs

(Received Seattle Sep 18 1946 H.S.B.I.&I. Co.)

(Received Sep 21 1946 Claim Dept. Hartford,
Conn.)

Debit Memorandum

From Inland Empire Paper Company

Millwood, Washington,

September 12, 1946.

To Hartford Steam Boiler Ins. & Ins. Co.

707 Artic Bldg.

Seattle, Washington

We debit your account as follows:

Overspeeding Engine No. 4 Accident, 1:45 P.M., July 3, 1946	
Use and Occupaney, see sheet A and A-1.....	\$7,350.00
Repair Labor, straight time, see sheet B.....	2,524.57
Repair Labor, premium time, see sheet B.....	321.19
Miscellaneous Repair parts drawn from Store Account, see Foreman's Requisitions, attached.....	448.54
Miscellaneous Repairs, not accomplished, see sheet C....	410.42
Loss of Fourdrinier Wire, see sheet D.....	198.52
Belting of Drives, see sheet E.....	280.74
Union Iron Works, invoice 360566.....	4,623.77
Supervision and overhead.....	16.06
	<hr/>
	\$16,173.81

Misc. In.	7,366.06
Belting	280.74
Store	5,482.73
Wires	198.52
Rep. Lbr.....	2,845.76

INLAND EMPIRE PAPER
COMPANY,

Per CAB

Received Seattle, Sep. 18, 1946. H.S.B.I. & I. Co.

Received Sep. 21, 1946, Claim Dept., Hartford,
Conn.

SHEET A

July	3, 1946	1:45 P.M. to 12:00 M.	.....	0.00 hrs.	*
	3	12:00 M. to 7:00 A.M.	.....	0.00 "	Holiday
	4		.....	0.00 "	Holiday
	5		.....	24.00 "	
	6		.....	24.00 "	
	7		.....	0.00 "	Sunday
	8		.....	24.00 "	
	9		.....	24.00 "	
	10		.....	24.00 "	
	11		.....	24.00 "	
	12		.....	24.00 "	
	13		.....	24.00 "	
	14		.....	0.00 "	Sunday
	15		.....	24.00 "	
	16		.....	24.00 "	
	17		.....	24.00 "	
	18		.....	24.00 "	
	19		.....	24.00 "	
	20		.....	24.00 "	
	21		.....	0.00 "	Sunday
	22		.....	24.00 "	
	23		.....	24.00 "	
	24		.....	24.00 "	
	25		.....	24.00 "	
	26		.....	24.00 "	
	27		.....	24.00 "	
	28		.....	0.00 "	Sunday
	29	Resumed operations 7:00 A.M.			

 480.00 hrs.

$\frac{480 \text{ hours}}{24}$ is 20.00 days

(Received Seattle Sept. 18, 1946, H.S.B.I. & I. Co.)

(Received Sept. 21, 1946, Claim Dept., Hartford, Conn.)

SHEET A-1

Use and Occupancy

Production: Constant: based on average experience.

No. 2 Machine.....	62.00 tons
No. 3 Machine.....	15.00 tons
No. 4 Machine.....	25.00 tons
	<hr/>
	102.00 tons

25.00
102.00 is 24.5%.

Therefore, No. 4 Machine represents 24.5% of Total Machine Room Production.

Time Loss: No. 4 Machine, from Midnight*, July 3rd, to 7:00 A.M., July 29th (see sheet A), 20 operating days.

24.5% of % 1,500.00 x 20 is \$7,350.00

*U & O starts at first midnight

(Received Seattle Sep 18 1946 H.S.B.I. & I. Co.)

(Received Sep 21 1946 Claim Dept. Hartford, Conn.)

Repair Labor on No. 4 Machine Special Account

July and August 1946

	Hours	Pay	O. T. Hours	Pay	Total Hours	Total Pay
Beguelin	143	\$229.52	21½	\$34.51	164½	\$264.03
ettis	84¾	110.18	13¼	17.23	98	127.41
Blew	65½	85.21	4½	5.85	70	91.06
sslinger	42½	55.80	6¼	8.18	48¾	63.98
Esslinger	55¼	64.09	¼	.29	55½	64.38
arlott	32½	38.61	3½	4.20	36	42.81
re Gebo	8	9.28	2	2.32	10	11.60
Horwath	59¼	80.28	7¼	9.83	66½	90.11
er LeFave	50½	68.43	6¾	9.14	57¼	77.57
y Lobdell	115¼	156.16	19¼	26.07	134½	182.23
Nelson	136¼	177.13	20	26.00	156¼	203.13
ence Owens	55½	56.61	9½	9.69	65	66.30
Palmen	150¾	195.98	8¼	10.72	159	206.70
Phelps	3½	4.06	1¾	2.03	5¼	6.09
Robie	22	28.60	3	3.90	25	32.50
Shollenberger	8	10.40	2	2.60	10	13.00
Stewart	122¼	165.65	13¼	17.96	135½	183.61
rd Stewart	47½	55.10	9¼	10.73	56¾	65.83
Stuck	89½	103.82	12¼	14.21	101¾	118.03
s Taggart	93¾	108.75	8¾	10.15	102½	118.90
y Tesch	91¼	118.63	15½	20.15	106¾	138.78
Tesch	45¼	61.31	6½	8.81	51¾	70.12
Verece	95¾	111.07	8¾	10.15	104½	121.22
Yates	110¾	150.62	21	28.67	131¾	179.29
imper	44¾	45.64	6¼	6.70	51	52.34
arbert	37	37.74	5	5.27	42	48.01
Henson	8	8.16			8	8.16
rt Beguelin	16	16.32	1¾	1.81	17¾	18.13
Bierce	20	20.40	1¾	1.81	21¾	22.21
league	8	8.16			8	8.16
Stafford	3	3.06			3	3.06
Bailey	58¼	59.47	5	5.10	63¼	64.57
Hanshaw	16¼	16.58	5	5.48	21¼	22.06
er Herrmann	5	5.10	1½	1.63	6½	6.73
Connell	4½	4.59			4½	4.59

	Hours	Pay	O. T. Hours	Pay	Total Hours	Total Pay
R. C. Davis.....	2	\$2.04			2	\$2
R. Barrett	29	29.58			29	29
W. McHarness	16	16.32			16	16
Ed Miller	5	5.10			5	5
Richard Korte	1	1.02			1	1
Total Hours.....	2,002.25		250.50		2,252.75	
Total Pay		\$2,524.57		\$321.19		\$2,845

cc to: JOS JLJ

(Received Seattle Sep 18 1946 H.S.B.I. & I. Co.)

(Received Sep 21 1946 Claim Dept. Hartford, Conn.)

SHEET C

Miscellaneous

4—#A-46 Steel Sash	15.00	\$60.00
80—14" x 20" Glass for above.....	.62	49.60
1—A-46 Steel Sash		15.00
8—14" x 20" Glass for above .....	.62	4.92
1—A-46 Steel Sash		15.00
14—14" x 20" Glass for above.....	.62	8.68
1—A-46 Steel Sash		15.00
10—14" x 20" Glass for above.....	.62	6.20
1—Steel Sash		15.00
12—14" x 20" Glass for above.....	.62	7.44
To glazing 124 lights.....	.06	7.44
1—6" x 9" Oil Glass, #3 Machine.....		1.28
To repair of spare Governor.....		24.61
Booster Motor Pulley, not replaced.....		162.85
54 ft. Hot Air Conduit, repair.....		17.36
		<hr/>
		\$410.42

(Received Seattle Sep 18 1946 H.S.B.I. & I. Co.)

(Received Sep 21 1946 Claim Dep. Hartford, Conn.)

SHEET D

Lindsay Fourdrinier Wire #89207..... \$324.38

had run 17 days at time of accident

Previous ten Lindsay wires ran

21 * days

49

49

61

42

53

47

39

46

31

or an average life of 43.8 days

43.8

17.0

26.8 days loss of normal life

26.8

$\frac{26.8}{43.8}$ is 61.2% loss of normal life

61.2% of \$324.38 is \$198.52

*damaged by deckle

(Received Seattle Sep 18 1946 H.S.B.I. Co.)

(Received Sep 21 1946 Claim Dept. Hartford, Conn.)

SHEET E

DRIVES:

Wire

40' 2" 8" x 6 ply Crackerjack Belting.....	1.105	44.39
--	-------	-------

Dryer

38' 2" 8" x 6 ply Crackerjack.....	1.105	42.18
------------------------------------	-------	-------

Stack (spliced only)

28' 8" 8" x 8 ply Condor.....	2.158	61.86
-------------------------------	-------	-------

3rd. Press

40' 6" 6" x 5 ply Challenger.....	1.105	44.75
-----------------------------------	-------	-------

2nd. Press

39' 8" 6" x 5 ply Challener.....	1.105	43.83
----------------------------------	-------	-------

1st. Press

39' 7" 6" x 5 ply Challenger.....	1.105	43.73
-----------------------------------	-------	-------

\$280.74

(Received Seattle Sep 18 1946 H.S.B.I. & I. Co.)

(Received Sep 21 1946 Claim Dept. Hartford, Conn.)

All Claims for Allowance Must Be Made on Receipt of Goods.

No Exchange or Express Charge Allowed on Remittances.

Office and Works—Montgomery Avenue and S.F.& N.Ry.

Telephone Glenwood 2711 Box 2135

Iron Works, Manufacturers of Mining, Smelting and Sawmill Machinery

Agencies: Allis Chalmers McCully Crushers and Rolls

Worthington Compressors, Pumps, Motors, Etc.

Spokane, Washington Aug 7 1946

to: Inland Empire Paper Co., Millwood, Washington

Order No. 925. Our Order No. 360566. Shipped to..... Called.....

Terms: Net cash. Interest Charged on all Accounts after 30 Days

Cast Iron Taper Pulleys	13815#		
Cast Iron Sole Plates.....	679#		
Pair Cast Flanged Couplings.....	1784#		
Cast Iron Boxes 3 7/16" }			
Cast Iron Boxes 3 15/16" }	1992#		
Extra 3 7/16" Base }			
Special Overtime heats in Foundry.....	18270#	14.86	2714.92
Pcs 1½" Hex Cold Rolled x 4½".....	30#	10.08	3.02
Pcs 1" Cold Rolled x 7½".....	10#	8.78	.88
Pcs 1¼" Cold Rolled x 12½".....	26#	8.78	2.28
1" Hex Nuts.....		10.23	2.46
1¼" Hex Nuts.....		19.09	2.29
Key Steel.....	16#	10.53	1.68
Pc 3 7/16" Cold Rolled Shaft x 22'3" }			
Pc 3 7/16" Cold Rolled Shaft x 17'8" }	2421#	7.73	187.14
Pc 3 7/16" Cold Rolled Shaft x 14'8" }			
Pc 3 7/16" Cold Rolled Shaft x 22'2" }			
Pc 3 15/16" Cold Rolled Shaft x 22'0" }	2277#	7.88	179.43
Pc 3 15/16" Cold Rolled Shaft x 11'0" }			
Pattern Labor 48 Hours.....		2.50	120.00
28 Hours Straight time			
20 Hours Overtime			
Machine Work 510 Hours.....		2.50	1275.00
427 Hours Straight time			
83 Hours Overtime			
			4489.10
3% State Sales Tax.....			134.67
1946. O.K. MUB. Store.....			4623.77

Received Seattle Sep 18 1946. H.S.B.I. & I.Co.)

Received Sep 21 1946. Claim Dept. Hartford, Conn.)

SHEET F

Supervision and overhead based on 5% of time
and one-half paid to Repair Labor Crews

Repair Labor..... \$321.19

5% of 321.19 is..... \$16.06

(Received Seattle Sep 18 1946 H.S.B.I.&I. Co.)

(Received Sep 21 1946 Claim Dept. Hartford, Conn.)

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause coming on for trial on the 7th day of October 1947 and having been tried before the court, a jury trial having been waived, William V. Kelley, of Witherspoon, Witherspoon & Kelley, appearing as counsel for the plaintiff, and Alan G. Paine, of Paine, Lowe & Coffin, and Franklin W. Stevenson appearing as counsel for the defendant, and the court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the court for decision, and the court being fully advised in the premises, now makes its Findings of Fact as follows:

FINDINGS OF FACT

1. That on the 3rd day of July, 1946, there was in effect an insurance policy, under the terms of which the defendant, Hartford Steam Boiler Inspection and Insurance Company insured the plaintiff, Inland Empire Paper Company against loss from an accident, as defined in said policy, to a Sumner Steam Engine located in the basement of the plaintiff's paper plant, against loss on the property of the plaintiff directly damaged by such acci-

dent and against loss due to total prevention of business at said plant caused solely by an accident to said Sumner Steam Engine.

2. That an accident is defined in said policy as “a sudden and accidental breaking, deforming, burning out or rupturing of the steam engine or any part thereof, which manifests itself at the time of its occurrence by immediately preventing continued operation, or by immediately impairing the functions of the steam engine and which necessitates repair or replacement before its operation can be resumed or its functions restored, but the breaking, deforming, burning or rupturing of any gasket, gland packing, or shaft seal or diaphragm shall not constitute an accident, nor shall the depletion of material in any part of the steam engine, due to pitting, corrosion or wear, be construed as an accident.”

3. That on the 3rd day of July, 1946, while said policy was in full force and effect the said Sumner Steam Engine over-speeded due to some undetermined cause which did not constitute an accident within the terms of said policy and that as a result of this overspeed some uninsured [499] equipment of the plaintiff connected with said engine was broken and damaged and other property of the plaintiff was damaged by the breaking of said uninsured equipment; the total amount of said damage being in the amount of \$8,823.81, and as a result of said damage plaintiff was prevented from carrying on its business for a period from July 3, 1946 to July 29, 1946.

4. That before the Sumner Steam Engine had accelerated to a speed which would result in damage to said engine, the belt directly driving the Pickering Governor broke causing the Pickering Governor Stop to operate bringing the engine to an idling speed.

5. That there were two devices designed to operate a butterfly safety valve in the main steam line, one being a safety chain which could be operated by men working on the main floor above the steam engine, and the other an automatic device located on the engine-driving-pulley which operated by centrifugal force and that either one or both of said devices had operated and the butterfly valve had been closed before any damage had been done to the plaintiff's property, but that due to the fact that the valve stem was binding in its packing it did not completely close but allowed the engine to continue to accelerate until the engine was brought to an idling speed by the breaking of the governor drive belt and the operation of the Pickering Governor Stop.

6. That none of the damage sued for was caused by an accident to an object insured under the policy of insurance.

7. That the plaintiff was not prevented from carrying on its business because of an accident to an object insured under the policy of insurance.

8. That the plaintiff duly notified the defendant's agent of the occurrence as required by said insurance policy.

From the Foregoing Findings, the Court concludes:

CONCLUSIONS OF LAW

1. That the plaintiff has sustained no loss for which the defendant is liable under the terms of any contract of insurance between the defendant and the plaintiff and that the plaintiff is not entitled to recover anything in this action.

2. That the defendant is entitled to judgment dismissing this [500] action and to judgment for its costs and disbursements incurred or expended herein.

Let judgment be entered accordingly.

Dated this 16th day of January, 1948.

SAM M. DRIVER,

United States District Judge.

Presented by

ALAN G. PAINE.

Copy received 10/27/47. W. V. Kelley.

[Endorsed]: Filed January 16, 1948.

[Title of District Court and Cause.]

JUDGMENT

This cause came on regularly for trial on the 7th day of October, 1947, William V. Kelley, of Witherspoon, Witherspoon & Kelley, appearing as counsel for the plaintiff, and Alan G. Paine, of Paine, Lowe & Coffin, and Franklin W. Stevenson appearing as counsel for the defendant, the trial by jury having been waived by the respective parties, the cause was tried before the court, sitting without a jury, whereupon witnesses on the part of the plaintiff and defendant were duly sworn and examined and documentary evidence introduced by the respective parties, the evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon, the court having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith.

Now therefore by reason of the law and findings aforesaid, it is hereby ordered, adjudged and decreed that the plaintiff take nothing by this action, and that the defendant have and recover costs herein taxed at \$142.60.

Dated this 16th day of January, 1948.

SAM M. DRIVER,

United States District Judge.

Presented by

ALAN G. PAINE.

[Endorsed]: Filed Jan. 16, 1948. [501]

[Title of District Court and Cause.]

ALTERNATIVE MOTION FOR A NEW TRIAL
OR FOR ENTRY OF PLAINTIFF'S RE-
QUESTED FINDINGS AND ENTRY OF
APPROPRIATE JUDGMENT THEREON.

Comes now plaintiff, Inland Empire Paper Company, a corporation, and moves the court for an order to amend its Findings or make additional Findings and amend the judgment accordingly.

Without waiving the foregoing motion, and in the event the same is overruled, the plaintiff, Inland Empire Paper Company, moves the court to set aside decision and judgment and grant a new trial to the plaintiff upon the following grounds:

I.

Irregularity in the proceedings of the Court, or adverse party, or any order of the Court, or abuse of discretion, by which such parties were prevented from having a fair trial;

II.

Accident or surprise which ordinary prudence could not have guarded against;

III.

Newly discovered evidence, material for the parties making the application, which they could not with reasonable diligence have discovered and produced at the trial;

IV.

Insufficiency of evidence to justify the decision, or that it is against law;

V.

Error in law occurring at the trial and excepted to at the time by the parties making the application.

VI.

Error in law arising out of the findings settled by the court, and failure of the court to make requested findings of the defendants and enter judgment thereon.

Dated this 24th day of January, 1948.

WITHERSPOON, WITHER-
SPOON & KELLEY,

Attorneys for Plaintiff

Received copy of above this 24th day of Jan.,
1948.

PAINE, LOWE & COFFIN,

Attorneys for Defendant.

[Endorsed]: Filed Jan. 24, 1948. [502]

[Title of District Court and Cause.]

AFFIDAVIT OF FRED BEGUELIN

State of Washington,
County of Spokane—ss.

Fred Beguelin, being duly sworn, deposes and says:

That he is one and the same person who was sworn and testified as Fred Beguelin, Master Mechanic of the Inland Empire Paper Company, for the plaintiff in the above-entitled cause, and that he has examined plaintiff's Exhibit "8" which is a picture of the side view of the Sumner Steam Engine showing a Pickering Governor; that said picture also shows the Butterfly Valve and the lever arms connected to the Butterfly Valve; that he personally inspected said lever arms of said Butterfly Valve after the accident of July 3, 1946, and found at that time that the lever arms and the hub thereof were broken, and that the violence of the pull on the hand release of the No. 4 paper machine, which was operated from the floor above by a chain which was attached to a pin held in the loops of the lever arms as shown on the attached picture, had broken the lever arm casting; this breaking of the lever arm casting was the reason why the hand release failed to pull the pin from the loops of the lever arm and release the Butterfly Valve so it would close: a copy of Exhibit 8 is attached hereto and made a part of this affidavit, and affiant has indicated on said picture among others by the following numbers: Loop (4), Pin (5) and Chain to hand release (6).

Affiant further states that the force of the pull broke the lever arm casting through the Hub (2) so that the end of the hand chain (6) attached to the Pin (5) held by the loops (4) was never pulled through and thus the counterweight on the Butterfly Valve (9) was never permitted to operate and thus close the Butterfly Valve (7).

Affiant further states that repairs were made under his direction and supervision in the shop of the Inland Empire Paper Company subsequent to the accident to the lever casting and hub. These repairs consisted of welding the hub (2) in its original position as shown in Exhibit 8 and adding a reinforced triangular web (3) to the lever casting (1).

Affiant further states that the Brownell overspeed automatic device [503] on the Sumner Steam Engine was set at about 700 feet per minute on the No. 4 paper machine which was approximately ten feet higher than the maximum operating speed of said No. 4 paper machine.

FRED BEGUELIN.

Subscribed and sworn to before me this 24th day of January, 1948.

[Seal]

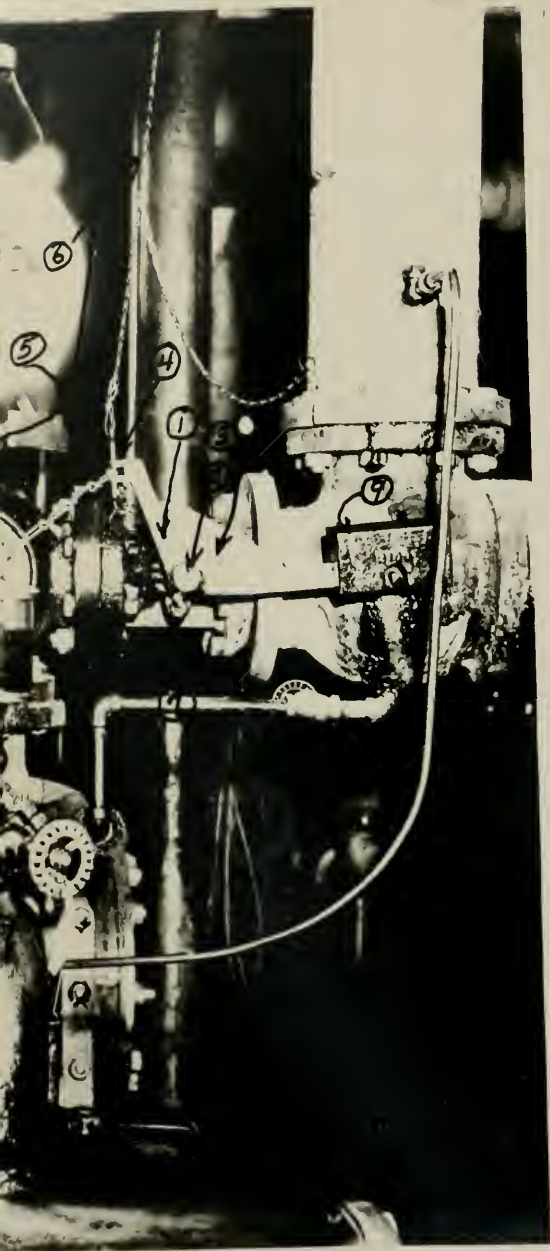
PHILIP H. IRWIN,

Notary Public in and for the State of Washington,
Residing at Spokane.

Received copy of the above without picture this 24th day of Jan., 1948.

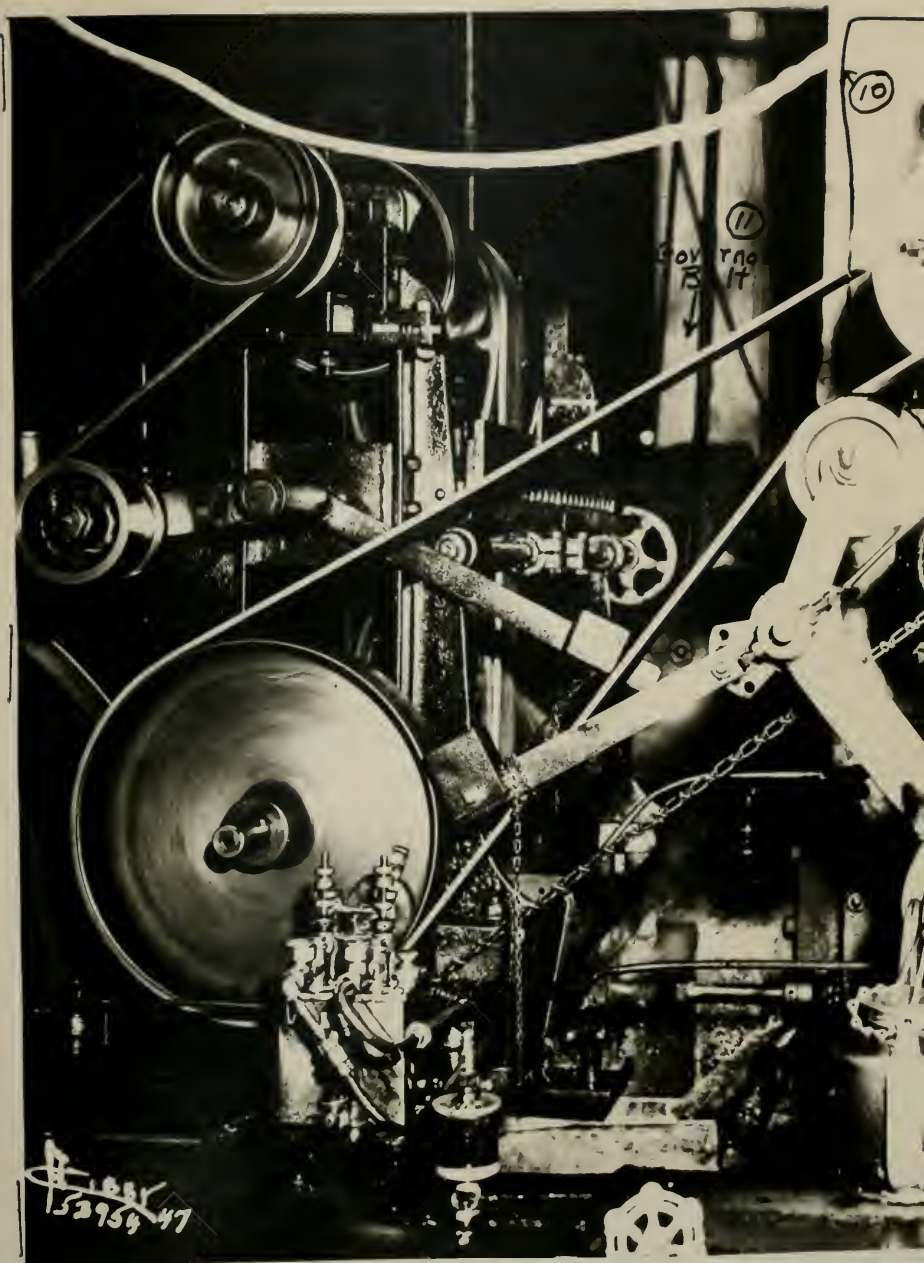
PAINE, LOWE & COFFIN,
Attorneys for Deft.

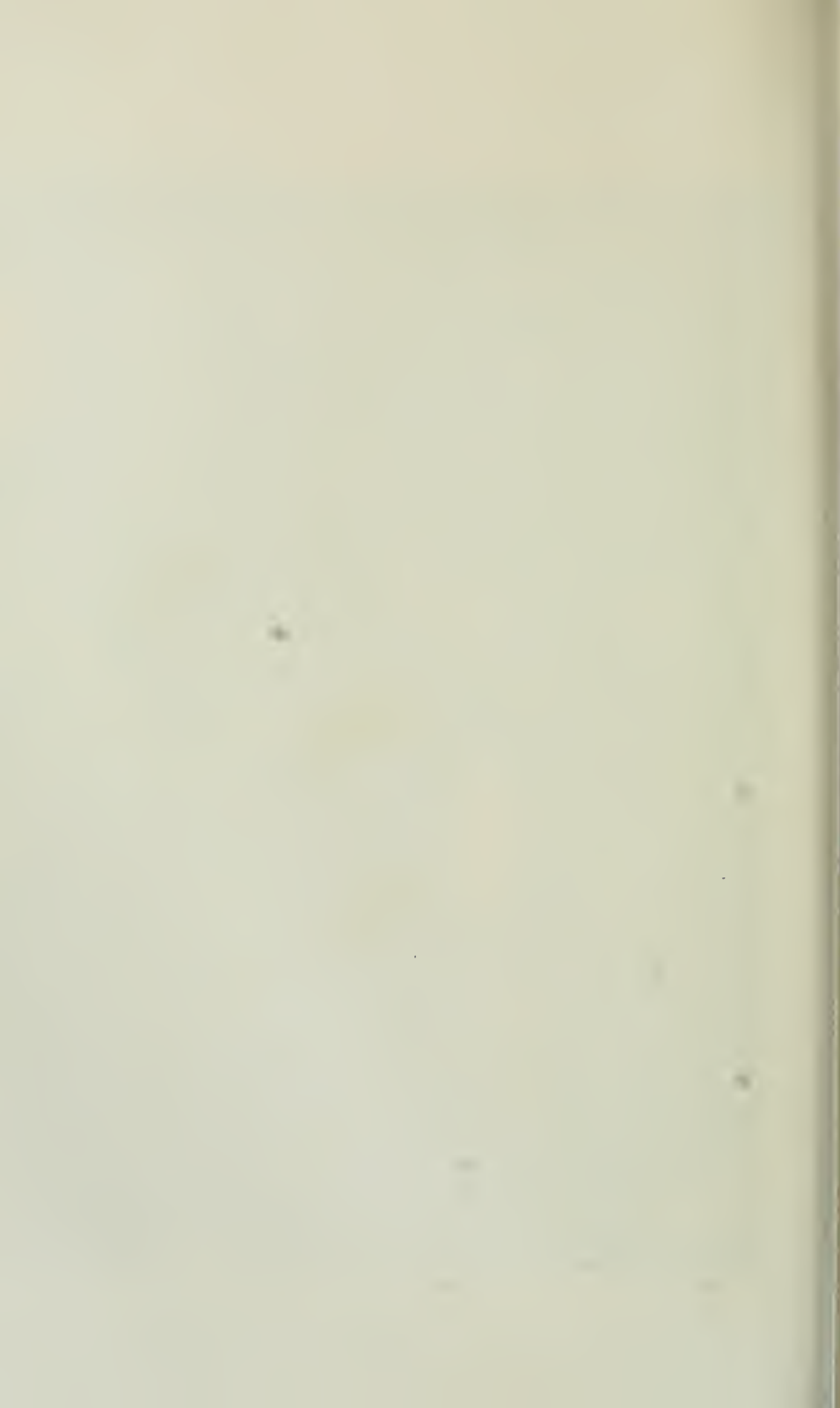
[Endorsed]: Filed Jan. 24, 1948. [504]



Ex. 8 Side View Sumner Steam Engine Showing Pickering Governor

- | | | | |
|---|-----------------------|---|----------------------------------|
| ① | Lever Casting | ⑦ | Butterfly Valve |
| ② | Hub | ⑧ | Chain to Brownell Trigger |
| ③ | Triangular Web | ⑨ | Counterweight on Butterfly Valve |
| ④ | Loop | ⑩ | Pickering Governor |
| ⑤ | Pin | ⑪ | Governor Belt |
| ⑥ | Chain to Hand Release | | |





[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW RE-
QUESTED BY PLAINTIFF

The above-entitled cause coming on for trial on the 7th day of October, 1947, and having been tried before the Court, a jury trial having been waived, William V. Kelley of Witherspoon, Witherspoon and Kelley, appearing as counsel for the plaintiff, and Alan G. Paine of Paine, Lowe & Coffin, and Franklin W. Stevenson appearing as counsel for the defendant, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the Court for decision and the Court being fully advised in the premises, now makes its Findings of Fact as follows:

FINDINGS OF FACT

I.

That the plaintiff, Inland Empire Paper Company, now is and at the time of the commencement of this action was a corporation organized in and existing under the laws of the State of Washington and was the owner of certain paper making machinery, including a certain Sumner Steam Engine at the time of its insurance and loss as hereinafter mentioned.

II.

That the defendant, Hartford Steam Boiler Inspection and Insurance Company, was at the time

of the commencement of this action and now is a corporation organized, created and existing under and by virtue of the laws of the State of Connecticut and authorized to write boiler and machinery insurance in the State of Washington.

III.

That on the 5th day of May, 1944, at Spokane, Washington, the defendant, through its authorized representative, in consideration of \$8,914.42, which the plaintiff then paid, executed to the plaintiff a policy of insurance upon a Sumner Steam 2-Cylinder Engine with a rating cylinder size of 12 inches, designated as No. 4 on said policy, copy of which is hereto annexed and marked "Exhibit A."

That an "accident" within the purview and coverage of said policy was specifically defined and limited therein as follows by Schedule 6, paragraph C: [506]

"C. As respects any object described in this Schedule, 'Accident' shall mean a sudden and accidental breaking, deforming, burning out or rupturing of the object or any part thereof, which manifests itself at the time of its occurrence by immediately preventing continued operation or by immediately impairing the functions of the object and which necessitates repair or replacement before its operation can be resumed or its functions restored, but the breaking, deforming, burning or rupturing of any gasket, gland packing, or shaft seal or diaphragm, shall not constitute an accident, nor

shall the depletion of material in any part of the object, due to pitting, corrosion or wear, be construed as an accident."

That said policy of insurance, Schedule 6, paragraph B, sub-paragraph (a) defines an object as follows:

"B. (a) As respects any such engine, 'Object' shall mean the complete engine so described (which shall include any apparatus used as an auxiliary in the operation of the engine and mounted on its frame, and all interconnecting piping between parts of the engine), but shall not include any piping leading to or from the engine, nor the condenser or its connecting pipe (or adapter), nor any electrical machine (other than a governor motor) or part thereof whether mounted with the engine on a common shaft or bed or otherwise, nor any foundation or other structure supporting the engine, nor any mechanism, appliance or shafting connected to the engine by belts, ropes, chains, couplings, gears, pipes or other means."

IV.

That the Sumner Steam Engine was connected to a main line shaft of No. 4 Paper Machine located in the basement of plaintiff's plant and the main line shaft in turn was connected to the No. 4 Paper Machine located on the first floor of plaintiff's paper plant directly above and connected to the Sumner Steam Engine by belts through the main line shaft; that the Sumner Steam Engine, the main line shaft

and the No. 4 Paper Machine upstairs were one complete unit, the only source of power of which was the Sumner Steam Engine.

V.

That on July 3, 1946, while said Summer Steam Engine was driving the No. 4 Paper Machine through its connection with said main line shaft, the control device on said engine failed to function, causing a sudden overspeed of said engine. This control device was a Pickering Throttling Governor which had for its purpose the maintenance of a constant speed; the Pickering Governor was driven by a leather belt from the Sumner Steam Engine as shown by plaintiff's Exhibit 8. The leather belt was a part of the Pickering Governor, and the Pickering Governor was a part of the Sumner Steam Engine. [507] The governor belt broke; the Pickering Governor did not trip because of a loose or partially loose set screw. The overspeed was caused by the breaking of the belt which drove the governor on said engine.

VI.

That there were also two devices designed to operate a butterfly safety valve in the main steam line to the Sumner Steam Engine, one being a safety chain which could be operated by a handle by men working on the main floor of the No. 4 Paper Machine above the Sumner Steam Engine, as shown by Exhibit 9 (handle connecting end of safety chain on operating floor) and Exhibit 8 (chain going through floor to Sumner Steam Engine), and the

other an automatic device located on the engine driving pulley which operated by centrifugal force and which was called a Brownell Overspeed Stop. This Brownell Overspeed Stop was composed of two parts, (1) a ball and spring part which was fastened on the flywheel, and (2) a trigger part which was a stationary part fastened to the frame of the engine. Exhibit

VII.

The butterfly valve on the main steam line was never closed by the hand lever or the proper functioning of the Brownell Overspeed Stop. The hand lever, as shown in Exhibit 9, did not close the butterfly valve because the lever arm on the valve broke and the pin was not completely removed from the loops when the employees violently pulled at the handle after the Sumner Steam Engine ran away. This pin is shown in Exhibit 8, a side view of the Sumner Steam Engine showing the Pickering Governor.

The Sumner Steam Engine attained an excessive speed beyond which the Brownell Overspeed Stop was set, and the Brownell Overspeed Stop did not function normally. The trigger part of the Brownell Stop was found in a tripped position after the accident, tripped by the movement of the loose engine belt. This trigger part was in close juxtaposition of less than an inch of the engine pulley which carried the belt that tripped it. This belt operated in a weaving fashion, which, under normal operating conditions sometimes had tripped the trigger part of the Brownell Overspeed Stop.

VIII.

That the Sumner Steam Engine, the main line shaft and the No. 4 Paper Machine as a single unit were damaged by this overspeed as follows: [508]

Paper Machine

The basement line shaft of said paper machine was twisted from one end to the other for a distance of more than 75 feet, with the result that all six couplings on said line shaft were damaged, and the eight pulleys mounted on said line shaft were all broken; the bearings supporting this line shaft were all damaged; the tops of two concrete piers supporting said line shaft were broken; two driven pulleys on the main floor above said basement line shaft were broken. The shafts supporting these two pulleys were twisted and damaged as well as certain miscellaneous other damage to the paper machine proper. In addition to said damage, the main engine belt was broken as well as all belts driving the different sections. Flying debris damaged fourdrinier wire and further damaged several table rolls.

Sumner Steam Engine

Broken lubricator lines, broken lubricator, several guards and damage to steam lines.

Plant

Various doors and windows, as well as a spare Pickering Governor, were damaged and broken by flying debris.

IX.

That said engine and control devices thereon had been inspected by the defendant on December 16, 1945, and passed as satisfactory.

X.

That plaintiff notified defendant's agents in Spokane immediately by telephone of the accident and that said agents in turn notified the Seattle Office of defendant, and defendant's Seattle representative phoned plaintiff the evening of July 3 and was further informed of said accident by plaintiff. Said representative, together with other representatives of defendant inspected said damage on July 5, 1946, and on the following day plaintiff furnished defendant with written notice of said accident and subsequently otherwise performed all the conditions of said policy on its part; that with the knowledge and consent of the defendant, plaintiff called in the Union Iron Works of Spokane, which had made part of said machinery and equipment, and with the knowledge, consent and approval of representatives of the defendant, the situation was appraised by the representatives of said Union Iron Works of Spokane, and said Union Iron Works of Spokane was given an order to make certain castings, line shaft bearings and other work which the plaintiff was not able to do with its own men and equipment under the circumstances. This work included nine pulleys to be cast, machined and [509] balanced as well as replacing the entire line shaft with couplings and bearings; other work such as wrecking the dam-

aged equipment, replacing the broken piers and erecting all equipment as it was received, as well as machine work on shafting and general repair work while waiting for the new equipment, was done by the maintenance crew of plaintiff with the knowledge, consent and approval of the defendant.

XI.

That said machinery, engine and other equipment was not purchased, repaired, assembled and tried until July 29, 1946, when plaintiff was able to once more use said Sumner Steam Engine to drive said paper machine.

XII.

That for the direct loss suffered during the period July 3 to July 29, 1946, as a result of said accident of July 3, 1946, plaintiff, at the request of defendant, submitted to defendant a statement of its loss in words and figures as follows:

“Debit Memorandum From Inland Empire
Paper Company

Millwood, Washington,
September 12, 1946.

To Hartford Steam Boiler Ins.
& Ins. Co.
707 Artic Bldg.
Seattle, Washington

We debit your account as follows:

Overspeeding Engine #4 Accident,

1:45 P.M. July 3, 1946.

Use and Occupancy.....	\$ 7,350.00
Repair Labor, straight time, see Sheet B.....	2,524.57
Repair Labor, premium time, see Sheet B.....	321.19
Miscellaneous Repair parts drawn from Store Account, see Foreman's Requisitions at- tached	448.54
Miscellaneous Repairs, not accomplished see Sheet C.....	410.42
Loss of Fourdrinier Wire, see Sheet D.....	198.52
Belting of Drives, see Sheet E.....	280.74
Union Iron Works, Invoice 360566.....	4,623.77
Supervision and overhead.....	16.06

 \$16,173.81

Misc. In.....	7,366.06
Belting	280.74
Store	5,482.73
Wires	198.52
Rep. Lbr.	2,845.76

Inland Empire Paper Company."

XIII.

That defendant did not and has not paid the said loss nor any part thereof, but on October 18, 1946, denied liability therefor under said policy. That plaintiff was damaged as a result of said accident in the sum of \$16,173.81.

From the foregoing Findings, the Court makes the following:

CONCLUSIONS OF LAW

I.

That as a direct and proximate cause of the breaking of the governor belt of the Sumner Steam Engine, the plaintiff has sustained a loss and damage

to said Sumner Steam Engine, main line shaft and No. 4 Paper Machine in the sum of \$8,823.81.

II.

That as a direct and proximate cause from the damage to said Sumner Steam Engine, main line shaft and No. 4 Paper Machine as one unit, the plaintiff was unable to use same for the period from July 3, 1946, until July 29, 1946, to its damage in the sum of \$7,350.00.

III.

That the plaintiff is entitled to judgment in the sum of \$16,173.81 and for interest at 6% from the 12th day of September, 1946, and for its costs and disbursements herein incurred.

Let judgment be entered accordingly.

Dated this day of January, 1948.

.....,

United States District Judge.

Presented by:

WILLIAM V. KELLEY.

Copy received this 16th day of January, 1948.

PAINE, LOWE & COFFIN,
Attorneys for Defendant.

Refused: January 16, 1948.

SAM M. DRIVER,
District Judge.

[Endorsed]: Filed Jan. 16, 1948. [511]

[Title of District Court and Cause.]

ORDER

This cause came on regularly for hearing on plaintiff's Alternative Motion for a New Trial or for Entry of Plaintiff's Requested Findings and Entry of Appropriate Judgment Thereon, on the 10th day of February, 1948; William V. Kelley of Witherspoon, Witherspoon and Kelley appearing as counsel for Plaintiff, and Alan G. Paine of Paine, Lowe and Coffin appearing as counsel for Defendant, and

The Court having examined the affidavit of Fred Beguelin submitted by the plaintiffs, and having heard arguments of counsel, and being fully advised in the premises; and

It appearing that there was no irregularity in the proceedings of the Court, or adverse party, or any order of the Court, or abuse of discretion, by which such parties were prevented from having a fair trial; that there was no accident or surprise which ordinary prudence could not have guarded against; that there was no newly discovered evidence, material for the parties making the application, which they could not with reasonable diligence have discovered and produced at the trial; that the evidence justifies the decision and is in accordance with law; and that there was no error in law occurring at the trial and excepted to at the time by the parties making the application; that there was no error in law

arising out of the findings settled by the court, and failure of the court to make requested findings of the defendants and enter judgment thereon;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed: That the Plaintiff's Alternative Motion for a New Trial or for Entry of Plaintiff's Requested Findings and Entry of Appropriate Judgment Thereon, should be and the same is hereby denied. Plaintiff excepts and exception is allowed.

Done in Open Court this 10th day of February, 1948.

SAM M. DRIVER,
Judge.

Presented by:

ALAN G. PAINE.

[Endorsed]: Filed February 10, 1948. [512]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the above-entitled parties, through their respective attorneys, that the Clerk of the above-entitled Court may forward to Witherspoon, Witherspoon and Kelley, plaintiff's counsel, all of the exhibits offered in evidence by plaintiff and defendant (whether such exhibits were received or rejected) for use in the preparation of brief on appeal. Plaintiff's counsel will give to the Clerk of the above-entitled Court their receipt therefor. When said exhibits have served their purpose, plaintiff's counsel will in turn deliver them to defendant's counsel for preparation of defendant's brief and take receipt of counsel for defendant therefor. Defendant's counsel, upon the completion of their brief, will return said exhibits to the Clerk of the above-entitled Court.

Dated this 14th day of February, 1948.

WITHERSPOON, WITHERSPOON
& KELLEY,

Attorneys for Plaintiff.

PAINE, LOWE & COFFIN,

Attorneys for Defendant.

[Endorsed]: Filed Feb. 16, 1948.

[Title of District Court and Cause.]

ORDER UPON STIPULATION TO
WITHDRAW EXHIBITS

It Is Hereby Ordered that the Clerk of this Court may forward to Witherspoon, Witherspoon and Kelley, plaintiff's counsel, all of the exhibits offered in evidence by plaintiff and defendant (whether such exhibits were received or rejected) for use in the preparation of brief on appeal. Said plaintiff's counsel will give to the Clerk of this Court their receipt therefor. When said exhibits have served their purpose, plaintiff's counsel will in turn deliver them to defendant's counsel for preparation of defendant's brief and take receipt of counsel for defendant therefor. Defendant's counsel, [513] upon the completion of their brief, will return said exhibits to the Clerk of this Court.

Done by the Court this 16th day of February, 1948.

SAM M. DRIVER,

United States District Judge.

Presented by:

W. V. KELLEY.

Received exhibits in accordance with stipulation and above order this 16th day of February, 1948.

WITHERSPOON, WITHERSPOON
& KELLEY,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 16, 1948.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Inland Empire Paper Company, a corporation, plaintiff, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action January 16, 1948, and filed of record in the above-entitled Court on said date and from each and every part thereof and from all rulings of the Court; and from that certain Order in the above-entitled cause signed by the Court February 10, 1948, denying Plaintiff's Alternative Motion for New Trial or for Entry of Plaintiff's Requested Findings and Entry of Appropriate Judgment, and from each and every error of law committed by the Trial Court.

Dated this 15th day of March, 1948.

WILLIAM V. KELLEY,
WITHERSPOON, WITHERSPOON
& KELLEY,

Attorneys for Plaintiff.

Service of the above Notice is acknowledged this 15th day of March, 1948.

PAINE, LOWE & COFFIN,
Attorneys for Defendant.

By ALAN P. O'KELLY.

Copy of the above Notice of Appeal mailed Paine, Lowe & Coffin, Attorneys for Defendant, this 15th day of March, 1948.

EVA M. HARDIN,
Deputy Clerk.

[Endorsed]: Filed March 15, 1948. [514]

APPEAL BOND

[Title of District Court and Cause.]

United States Fidelity and Guaranty Company
Baltimore, Maryland

No. 78436. \$250.00

Know All Men by These Presents, That we, Inland Empire Paper Company, a corporation, as Principal, and the United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto the Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a corporation, in the just and full sum of Two Hundred Fifty and No/100ths Dollars (\$250.00), good and lawful money of the United States of America, well and truly to be paid, and for the true payment of which we hereby bind ourselves, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Witness our hands and seals this 15th day of March, A.D. 1948.

The Condition of the Above Obligation Is Such That, Whereas the above named plaintiff has appealed to the Circuit Court of Appeals for the Ninth Circuit from the final judgment of the District Court of the United States for the Eastern District of Washington, Northern Division, entered against it in the above-entitled action on the 16th day of January, 1948; and

Whereas, the above named principal has heretofore given due and proper notice that it will appeal from said decision and judgment of the District Court of the United States for the Eastern District of Washington, Northern Division;

Now, if the said principal, Inland Empire Paper Company, a corporation, shall pay to the defendants above named, all costs and damages that may be awarded against it on the appeal, or on the dismissal thereof not exceeding Two Hundred Fifty and No/100ths Dollars (\$250.00), then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

INLAND EMPIRE PAPER
COMPANY,

[Seal] By A. W. WITHERSPOON,
President.

UNITED STATES FIDELITY
AND GUARANTY
COMPANY,

[Seal] By THOS E. MOLONEY,
Attorney-in-Fact.

From the Office of Old National Insurance, Inc.
1124 Old National Bldg., Spokane

Received copy of above this 18th day of March,
1948.

PAINE, LOWE & COFFIN,
Attorneys for Defendant.

[Endorsed]: Filed March 18, 1948. [515]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF RECORD
TO BE CERTIFIED FOR APPEAL PURPOSES

Comes now Inland Empire Paper Company, a corporation, plaintiff, and hereby designates the following parts of the record and proceedings to be included in the record on appeal with the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

1. Transcript of that case in the Superior Court of the State of Washington, in and for the County of Spokane "Inland Empire Paper Company, a corporation, plaintiff, vs. Hartford Steam Boiler Inspection and Insurance Company of Hartford, Connecticut, a corporation, defendant," being No. 109095 in said Superior Court and filed in the United States District Court, May 29, 1947, as cause No. 657, including the Summons and Complaint and Order of Removal to the United States District Court.
2. Answer of Defendant in the District Court of the United States.
3. Reply.
4. Findings of Fact and Conclusions of Law signed by the Court, January 16, 1948.
5. Judgment in favor of Defendant signed and entered January 16, 1948.
6. Alternative Motion for New Trial or for Entry of Plaintiff's Requested Findings and Entry of Appropriate Judgment thereon.

7. Affidavit of Fred Beguelin in Support of Alternative Motion, including the copy of Exhibit 8, attached thereto and made a part of the Affidavit.
8. Findings of Fact and Conclusions of Law Requested by Plaintiff, filed January 16, 1948.
9. Order denying Plaintiff's Alternative Motion for New Trial or for Entry of Plaintiff's Requested Findings and Entry of Appropriate Judgment signed February 10, 1948.
10. Reporter's transcript of all testimony, evidence and proceedings at the trial, including the rulings of the Court on the admission and exclusion of testimony.
11. Order upon Stipulation to Withdraw Exhibits.
12. Notice of Appeal, and Bond on Appeal.

The Clerk of the above entitled Court is hereby directed to prepare, certify and transmit to said Circuit Court of Appeals the above designated Record on Appeal.

Dated this 15th day of March, 1948.

WILLIAM V. KELLEY,
WITHERSPOON, WITHERSPOON
& KELLEY,

Attorneys for Plaintiff. [516]

Service of the above Designation of Portions of Record to be Certified for Appeal Purposes is acknowledged this 15th day of March, 1948.

PAINE, LOWE & COFFIN,
Attorneys for Defendant.

By ALAN P. O'KELLEY.

[Endorsed]: Filed March 15, 1948.

[Title of District Court and Cause.]

AMENDED DESIGNATION OF PORTIONS OF
RECORD TO BE CERTIFIED FOR AP-
PEAL PURPOSES.

Comes now Inland Empire Paper Company, a corporation, plaintiff, and hereby designates for inclusion the complete record and all the proceedings and evidence in the above-entitled cause to be included in the record on appeal with the United States Circuit Court of Appeals for the Ninth Circuit.

The Clerk of the above-entitled Court is hereby directed to prepare, certify and transmit to said Circuit Court of Appeals the above designated complete record and all the proceedings and evidence in the action.

Dated this 1st day of April, 1948.

WILLIAM V. KELLEY,
WITHERSPOON, WITHERSPOON
& KELLEY,

Attorneys for Plaintiff.

Service of the above Amended Designation of Portions of Record to be Certified for Appeal Purposes is acknowledged this 1st day of April, 1948.

PAINE, LOWE & COFFIN,
Attorneys for Defendant.

[Endorsed]: Filed April 1, 1948. [517]

[Title of District Court and Cause.]

STIPULATION

The parties stipulate that the original defendant's exhibit No. 12 cannot be reproduced and ask that the Court direct the Clerk to forward said original defendant's exhibit 12 in lieu of a copy thereof to the Clerk of the United States Circuit Court of Appeals for the Ninth District.

Dated this 8th day of April, 1948.

WITHERSPOON, WITHERSPOON
& KELLEY,

Attorneys for Plaintiff.

PAINE, LOWE & COFFIN,
Attorneys for Defendant.

[Endorsed]: Filed April 8, 1948.

[Title of District Court and Cause.]

ORDER FORWARDING DEFENDANT'S
EXHIBIT NO. 12

The Court having considered the stipulation of the parties on file,

It Is Hereby Ordered that the Clerk of this Court may forward to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit the original defendant's exhibit No. 12.

Done by the Court this 8th day of April, 1948.

SAM M. DRIVER,

United States District Judge.

Presented by:

W. V. KELLEY.

[Endorsed]: Filed April 8, 1948. [518]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America,
Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing type-written pages numbered from 1 to 518 (in two volumes) to be a full, true and correct copy of so much of the record, papers and proceedings in the above entitled cause as are necessary to the hearing of the appeal therein in the United States Circuit Court of Appeals as called for by the Designation and Amended Designation of Portions of Record to be certified for appeal purposes, as the same remain on file and of record in the Office of the Clerk of said District Court, and that the same constitutes the record on appeal of Inland Empire Paper Company, a corporation, from the final judgment of the District Court of the United States for the Eastern District of Washington to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, California.

I further certify that the original defendant's exhibit 12, a piece of belting, is transmitted herewith in accordance with the order of this court entered on April 8, 1948.

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing record amount to the sum of \$22.00 and that

the same has been paid in full by Witherspoon, Witherspoon & Kelley, Attorneys for the Appellant.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid District Court this 22nd day of April, 1948.

[Seal] /s/ A. A. LaFRAMBOISE,
Clerk, United States District Court, Eastern District of Washington. [519]

[Endorsed]: No. 11908. United States Circuit Court of Appeals for the Ninth Circuit. Inland Empire Paper Company, a Corporation Appellant, vs. Hartford Steam Boiler Inspection and Insurance Company of Hartford Connecticut, a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division.

Filed April 23, 1948.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals,
Ninth Circuit
No. 11908

INLAND EMPIRE PAPER COMPANY,
a corporation,

Appellant,

vs.

THE HARTFORD STEAM BOILER INSPEC-
TION AND INSURANCE COMPANY,
a corporation,

Appellee.

REQUEST FOR PRINTING OF RECORD
AND STATEMENT OF POINTS

I.

Appellant deems consideration by the Court of the entire record certified to this Court by the Clerk of the District Court necessary on this appeal to a proper understanding of the questions presented, and hereby requests that the same be printed, excepting and omitting formal parts of pleadings and other court papers.

II.

Appellant hereby designates for consideration on this appeal the following points on which it intends to rely:

(1) The proximate cause of the overspeeding of the insured Sumner Steam Engine was the breaking of its belt that drove its governor. The direct

result of this overspeed was the damage to machinery directly attached to the engine and the adjacent premises. The speed of the insured engine was supposed to be kept constant for the purpose of making paper by a governor which was called a Pickering Governor. This Pickering Governor was driven by a belt. (Exhibit 12). This belt was a part of the engine and governor. This belt broke. (Record of Proceedings at the Trial 183, 305.)

(2) After the belt driving the Pickering Governor broke, the safety stop on the Pickering Governor failed to function to prevent the insured engine from overspeeding. This safety stop had been placed upon the engine at the request of the insurance company, (R.P.T. 195, 196, 260) which recommended that the governor be fitted with a safety stop so that in case the governor belt should break, the governor valve would be closed automatically and the engine stopped from running away. (Plaintiff's Exs. 15 and 17). However, this safety stop placed on the Pickering Governor to shut the steam supply off if the governor belt should break did not function at the time of the accident. (R.P.T. 183, Ex. 12.)

(3) After the safety stop on the Pickering Governor failed, the Pickering Governor immediately opened wide over speeding the insured engine and turned the line shaft pulleys and attached paper machine so fast (R.P.T. 56, 57, 32, 46, 51, 52, 71 and 72) that the pulleys on the line shaft and two pulleys on the paper machine upstairs burst. The

line shaft was twisted and destroyed, and the plaintiff sustained damages in the amount of \$16,173.81. (P. Ex. 14.)

(4) After the belt of the Pickering Governor of the insured engine broke, and after its safety stop failed to function, the connected line shafting operated the No. 4 paper machine as one unit at a sudden and excessive speed just before the break up of the line shafting and the machinery. This sudden and excessive speed came and could only come from one source, the insured Sumner Steam Engine. (R.P.T. 32, 46, 51, 52, 56, 57, 71 and 72.)

(5) After the belt of the Pickering Governor of the insured engine broke, and after the safety stop of the Pickering Governor failed to function, the other two control devices of the insured engine also failed to function and stop the sudden and excessive speed of the engine. (R.P.T. 183, 305.) These other two control devices were a Brownell Overspeed Stop and a Hand Pull Safety Chain. (P. Exs. 8, 9 and 10, R.P.T. 100, 86 and 98.) With only this type of stop, should this mechanism fail, serious results were bound to follow. (R.P.T. 260.) This was the reason why the insurance company had recommended that the paper company put a safety stop on the Pickering Governor. (R.P.T. 195, 260, P. Exs. 15 and 16.) Both of these control devices, the Brownell Overspeed Stop and the Hand Pull Safety Chain, were attached to the butterfly valve on the main steam line coming into the insured engine. Either control device was supposed to close this butterfly valve, (R.P.T. 170, 181 and 192) which oper-

ated like an old-fashioned damper on an old-fashioned wood stove, and was used for emergency closing of the steam line. The Brownell Overspeed Stop was a mechanically operated stop on the flywheel of the insured engine which was supposed to operate automatically to shut off the engine when it attained a certain set speed, usually about 10% higher than the maximum paper making speed, while the Hand Pull Safety Chain, which was also attached to the butterfly valve, could be operated manually. (P. Exs. 8, 11, R.P.T. 164.) The Brownell Overspeed Stop was supposed to operate automatically if the Pickering Governor failed and the engine overspeeded.

(6) The Brownell Overspeed Stop had been set to shut the engine off automatically at about 270 revolutions per minute (R.P.M.), or at a corresponding speed for the attached No. 4 paper machine of 700 lineal feet per minute. (R.P.T. 170.) At the time of the accident the Brownell Overspeed Stop never functioned and the insured Sumner Steam Engine was going at least 800 R.P.M., or almost three times the speed at which the Brownell Overspeed Stop had been set, and the No. 4 paper machine was driven faster than it had ever before been driven at an estimated speed of 2,000 lineal feet per minute. (R.P.T. 32, 46, 51, 52, 64, 71, 72 and 84.)

(7) The Trial Court erred in disregarding the undisputed physical fact that the belt of the Pickering Governor broke and that the safety stop on

the Pickering Governor did not function after the belt broke; in disregarding the undisputed physical fact that the Brownell Overspeed Stop did not function at the speed for which it was set (R.P.T. 129, 164) even though there was no evidence by any party as to why the Brownell Overspeed Stop did not function to close the butterfly valve; in disregarding the physical fact that the Hand Pull Safety Chain did not function to close the butterfly valve. (R.P.T. 86, 98.) The Trial Court erred in denying plaintiff's alternative motion for new trial or entry of plaintiff's requested findings and entry of judgment thereon (Transcript 512) for the reason that he ignored the doctrine of *res ipsa loquitur* in ruling that the plaintiff had not made a *prima facie* case and because the evidence did not justify the Trial Court's decision. (R.P.T. 1 to 449.)

Pickering Governor

(8) The Trial Court erred in admitting in evidence, over plaintiff's objection, testimony of the defendant showing a certain experiment conducted August 3, 1946, after the accident under conditions dissimilar to the operating conditions of the engine at the time of the accident, whereby it was sought to be shown by the defendant that the safety stop of the Pickering Governor must have functioned. (R.P.T. 297.)

(9) The Trial Court erred in admitting in evidence, over plaintiff's objection, testimony of defendant's witness, Philip McKeon, and in denying

plaintiff's motion to strike the testimony for the reason that it related to tests conducted on the Sumner Steam Engine at a period almost a month after the accident and at a time when the plaintiff's plant had been repaired and the machinery in question renovated and operating under conditions dissimilar to those existing at the time of the accident. (R.P.T. 328 to 336.)

(10) The Trial Court erred in rejecting formal offers of proof that the Spokane and Seattle representatives of defendant insurance company admitted on or about August 4, 1946, after investigation of the accident, that the proximate cause in their opinion was the breaking of the belt on the Pickering Governor. (R.P.T. 133, 134, 210 to 211.)

Butterfly Valve

(11) The Trial Court erred in admitting in evidence, over plaintiff's objection, testimony of defendant showing certain experiments conducted July 7, 1946, after the accident, which were performed under conditions dissimilar to the operating conditions of the engine at the time of the accident, whereby it was sought to be shown by the defendant that the butterfly valve could have leaked enough steam into the insured engine so that the paper machine could have operated even if the Brownell Overspeed Stop or the Hand Pull Safety Chain, or both, had function, (R.P.T. 313 to 316) in view of the undisputed testimony that there never had been enough steam leaking through the butterfly valve to operate the engine (R.P.T. 152)

and that there had never been an instance of over-speeding the engine with the butterfly valve closed. (R.P.T. 171.) The Trial Court erred in rejecting proffered testimony that another portion of the insured engine, in addition to the belt of the Pickering Governor, had in fact broken at the time of the accident, to wit: a part of the Hand Pull Safety Chain. (Affidavit of Fred Beguelin, Tr. 503.)

(12) The Trial Court erred in admitting in evidence, over plaintiff's objection, testimony of an insurance inspector of defendant that he had been told by a stationary engineer of plaintiff that "one time they had made paper for several hours with this butterfly valve in a closed position." (R.P.T. 256.)

/s/ WILLIAM V. KELLEY,
WITHERSPOON, WITHERSPOON
& KELLEY,
Attorneys for Appellant.

Service of the foregoing Request for Printing of Record and Statement of Points, by receipt of a copy thereof, is hereby accepted this 27th day of April, 1948.

PAINE, LOWE & COFFIN,
Attorneys for Appellee.

[Endorsed]: Filed April 29, 1948.